

# EXHIBIT 1

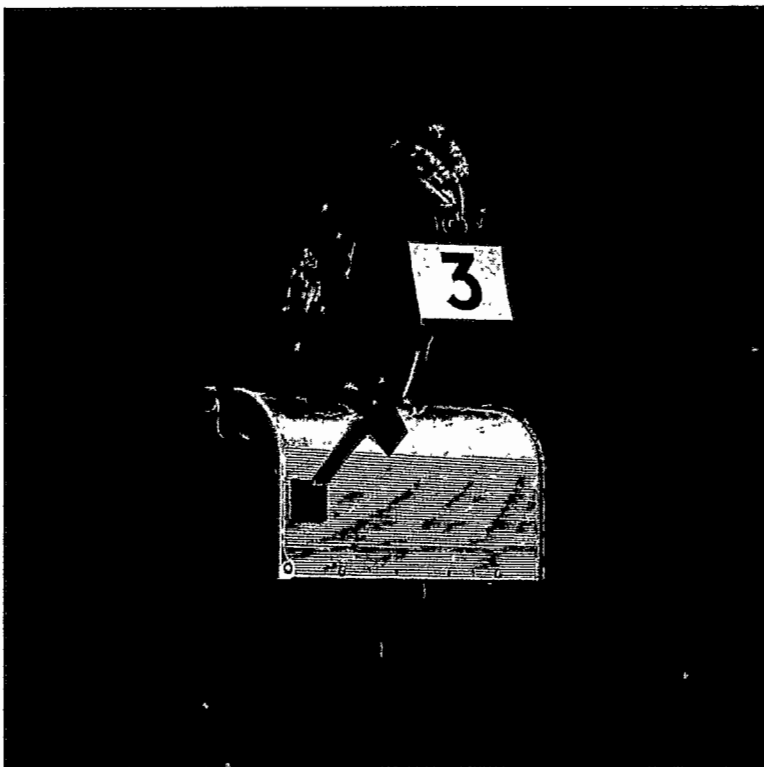
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## THE LEGAL FIGHT AWAITING US AFTER THE ELECTION

*The aftermath of November's vote has the potential to make  
2000 look like a mere skirmish.*

By Jeffrey Toobin

September 21, 2020



*This year, each side has mustered for a legal fight that began months ago and may well continue long after Election Day.* Illustration by Tyler Comrie. Photographs by Zena Holloway / Getty (bird); Nathan Griffith / Getty (mailbox)

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he immediate aftermath of the Presidential election of 2000 has taken on the air of legend. On Election Night, news organizations first called Florida for Vice-President Al Gore—then, about two hours later, withdrew the call and, about four hours after that, declared that George W. Bush, the governor of Texas, had won the state, giving him enough electoral votes to become President. Gore called Bush to concede, and left his hotel in a motorcade to announce the end of his campaign to his supporters. His aides, learning that the race in Florida was, in fact, too close to call, tried frantically to contact the Vice-President in his limousine. They reached him just in time, and he telephoned Bush to retract the concession. Bush indignantly told Gore that his “little brother”—the governor of Florida, Jeb Bush—had said that he had won. “Let me explain something,” Gore replied. “Your little brother is not the ultimate authority on this.”

Like all historical events, the following thirty-five days can look, in retrospect, inevitable, even preordained. But they were a product of choice, improvisation, and happenstance. Gore demanded recounts in four Democratic-leaning counties, which began the painstaking process of studying their punch-card ballots and determining whether the tiny boxes known as chads had been fully detached. Bush responded by filing a lawsuit in federal court in Miami to stop the recounts. In one of the lesser-known events surrounding that case, James A. Baker III, Bush’s lead strategist at the time, called John C. Danforth, the former Republican senator from Missouri and an ordained minister, who was famous for his rectitude. Baker wanted Danforth to be Bush’s spokesman in the suit. Danforth was horrified. “Candidates don’t sue,” he told Baker. “You could ruin Governor Bush’s career. He’s only fifty-four years old, and the decision to file a court case like this would be a black mark that followed him forever. And it would destroy the reputation of everyone involved on the Bush side.”

Danforth came from an era when political norms dictated a culture of deference to announced electoral outcomes. (Richard Nixon, reflecting these values, chose not to challenge the results of his narrow defeat in 1960.) Baker thanked Danforth for his time and proceeded to file that lawsuit and several others, mobilizing the Republican Party behind the efforts for the George Bush–Dick Cheney ticket. There were street protests outside the Vice-President’s mansion (“Get out of Cheney’s house!”), and a deployment of the finest political and legal talent in the Republican Party. Many of the lawyers working on the recount cases, far from suffering damage to their careers, were guaranteed political futures—they included John G. Roberts, Jr., whom Bush appointed to the Supreme Court, and Noel Francisco, who became President Trump’s Solicitor General.

To the frustration of countless Democrats, Gore took a high-minded, traditional approach, asserting that the recount was a legal, not a political, process, and directing his supporters to stay off the streets. (Gore told the Reverend Jesse Jackson to call off protests that he had organized against the disenfranchisement of African-Americans in Florida.) In this spirit, Gore named the diplomat Warren Christopher, rather than a pol, to lead his recount efforts, and relied on a talented but small group of lawyers in Florida, who struggled to keep up with Republican reinforcements from around the country. The contrasts were cultural in addition to being substantive. David Boies, Gore’s lead lawyer toward the end of the process, promenaded along the broad plazas of Tallahassee, bantering cheerfully with reporters and passersby. Benjamin Ginsberg, the general counsel to the Bush campaign and the dean of Republican election lawyers, paced the streets in a state of rage. “They are trying to steal this,” Ginsberg said repeatedly, of the Democrats, color rising to the top of his bald head. In the end, Bush’s resort to the courts proved to be his salvation. In the case known as *Bush v. Gore*, the Supreme Court, by a vote of five to four, held that the recounts violated Bush’s rights, thus sealing his victory in Florida.

Ultimately, George Bush was declared the winner in Florida by five hundred and thirty-seven votes, out of some six million cast. The result might have been the same if Gore had chosen a more assertive strategy, but the parties’ contrasting approaches—

Republican aggression versus Democratic restraint—remain a crucial legacy of the contest. That year, the recount struggle came as a surprise to both candidates. This year, each side has mustered for a legal fight that began months ago and may well continue long after November 3rd. President Trump has ratcheted up the Bush strategy of total political warfare: he has already refused to commit to accepting the outcome of the election. “The only way we’re going to lose this election is if the election is rigged—remember that,” he said recently. “So we have to be very careful. . . . The only way they’re going to win is that way. And we can’t let that happen.”

Democrats say that a strategy of reticence is a thing of the past. One Democratic veteran assured me that the Democratic Party of today is “totally different” from the Party of 2000: “Much less institutionally focussed, more ideologically grounded, and uncompromising. There is zero chance that anybody is going to say at some point that it’s better for the country that we settle the matter now, give in, and then try to win in four years. No one thinks that another four years of Trump is survivable. The campaign believes this is an existential battle.”

Compounding all this is the coronavirus pandemic, which will force dramatic changes in how voters cast their ballots. The number of mail-in ballots will increase substantially: recent national polls suggest that about a third of all voters plan to vote by mail this year. Trump has assailed the practice of voting by mail, asserting without evidence that it is susceptible to fraud. In fact, Washington, Oregon, Colorado, and Utah have used universal mail-in voting—in which the state mails a ballot to each registered voter—for some time, including in previous Presidential elections, with few significant problems. There is no meaningful difference between absentee voting and mail-in voting, but Trump supports absentee voting, even using it himself. In early August, when he was signing his Florida absentee-ballot application, he said, “Absentee ballots are good. Universal mail-ins, when you get inundated with these things, are bad and will lead to terrible things, including voter fraud.” More recently, Trump has spoken at length about the purported evils of universal mail-in voting. “They are sending out fifty-one million ballots to people that didn’t ask for them,” he said during an interview with Sean Hannity on Fox News, on the final night of the Democratic National Convention. “This will be the most fraudulent election in history. . . . It’s just a horrible thing. It’s going to be impossible to police.” (It’s unclear where Trump got that figure; at other times, he has used the figure of eighty million.)

Last month, the House of Representatives passed a bipartisan bill to provide an additional twenty-five billion dollars to the U.S. Postal Service, largely to insure that it could process the additional mailed ballots. Trump has vowed to veto the bill if it reaches him. “They need that money in order to make the post office work, so it can take all of these millions and millions of ballots,” he said. “If we don’t make a deal, that means they don’t get the money. That means they can’t have universal mail-in voting. They just can’t have it.” In recent weeks, he has also attacked the use of drop boxes, which allow voters to deposit their ballots before Election Day. He has claimed, without evidence, that they can be used to perpetrate electoral fraud.

Trump’s grievance is almost certainly tied to the fact that Democrats are more likely to vote by mail in the upcoming election than Republicans are. This will contribute to a phenomenon called the “blue shift”—votes that are counted, and reported, later on tend to favor Democrats. This year’s blue shift may be particularly dramatic. In a recent poll by Hawkfish, a data firm associated with Democrats, only nineteen per cent of Trump supporters said that they planned to vote by mail, compared with sixty-nine per cent of Biden supporters. Using data from late-summer polls, Hawkfish predicted that Election Night results could show Trump in the lead, with a total of four hundred and eight electoral votes. Four days later, with seventy-five per cent of the mail-in votes counted, Biden would take the lead, with two hundred and eighty electoral votes and, with all the votes counted, the former Vice-President would win the Presidency, with three hundred and thirty-four electoral votes.



Throughout the campaign, Trump has sought to undermine voters' faith in the democratic process—going so far as to suggest, on Twitter, that the election should be delayed until people could “properly, securely and safely” vote. (He later backtracked on the idea, which would require a change to federal law.) Last week, Trump tweeted, “the Nov 3rd election result may NEVER BE ACCURATELY DETERMINED.” The norms of political conduct, already fading at the turn of the century, now seem to have disappeared altogether. As a result, the aftermath of the 2020 election has the potential to make 2000 look like a mere skirmish.

Democrats and Republicans have already filed dozens of lawsuits in attempts to define the rules in November—an overture for the battles that may follow the election. If Trump is the id of his campaign, its superego is Justin Riemer, the chief counsel of the Republican National Committee, who previously worked for the Virginia Board of Elections. Riemer eschews overstatement in favor of the careful words of a onetime bureaucrat. “We see what’s going on as a systemic attack on the existing absentee-voting safeguards that are in place around the country,” Riemer told me. “We acknowledge that there is going to be much more absentee voting, so it’s never been more important to have those safeguards.” In recent weeks, the Trump campaign has been sending questionnaires to election officials in swing states, asking for details about how they intend to conduct the election and count the votes. The officials’ answers could become important evidence in any post-Election Day litigation.

The architect of the Democrats’ pre-Election Day legal strategy is a Washington lawyer named Marc Elias. He is a partner at the firm Perkins Coie, the former professional home of Bob Bauer, who defined the role of the Democratic election specialist and served as the White House counsel under President Obama. Bauer is bearded and professorial; he now teaches at New York University School of Law and advises the Biden campaign. Elias, who relishes the combat of litigation, is more of a street fighter. He came to prominence in 2008 and 2009, when he represented Al Franken in an extended recount in a Minnesota Senate race. Franken eventually prevailed by three hundred and twelve votes, out of nearly three million cast. “That shaped my approach,” Elias told me. “Everything you do in the voting process should shape what happens at the end, when the votes are counted.” In light of the likely challenges to changes in vote totals after Election Day, the Biden campaign has established a legal task force, which includes hundreds of lawyers. It’s led by Bauer and Dana Remus, the campaign’s general counsel, and includes two recent Solicitors General in Democratic Administrations, Walter E. Dellinger III and Donald G. Verrilli, Jr.

Shortly after the pandemic broke out in the United States, in March, Elias, in a blog post titled “Four Pillars to Safeguard Vote by Mail,” outlined the Democrats’ approach:

1. Postage must be free or prepaid by the government.
2. Ballots postmarked on or before Election Day must count.
3. Signature matching laws need to be reformed to protect voters.
4. Community organizations should be permitted to help collect and deliver voted, sealed ballots.

To someone unversed in the arcana of election law, these demands may seem uncontroversial—but Riemer likes to frame each of Elias’s pillars as an invitation for voter fraud. “Federal law says that Election Day is the first Tuesday after the first Monday in November, and we believe that’s when the election ends,” Riemer told me. “And the postmark rule is impractical.” He believes that states should make their own decisions about postage-paid envelopes, and that election officials must compare the signatures on absentee ballots with those on voter-registration documents to insure that only eligible people vote and that no one votes twice.

Rierner also emphatically opposes the community collection of ballots—the practice by which campaigns or community groups gather absentee ballots from multiple voters and submit them together—known by Republicans as “ballot harvesting.” It is true that community ballot collection, unlike Elias’s other pillars, has been associated with voter fraud, if rarely. In a 2018 race in North Carolina’s Ninth Congressional District, a Republican operative, according to investigators, filled in at least a thousand mail-in-ballot requests, many without the voters’ knowledge. After the fraud was exposed, the state held the election again, several months later. Republicans often cite this past May’s election for city council in Paterson, New Jersey, which led to charges of fraud for the misuse of mail-in ballots against several local officials. Trump tweeted, “So much time is taken talking about foreign influence, but the same people won’t even discuss Mail-In election corruption. Look at Paterson, N.J. 20% of vote was corrupted!” At a news conference, Trump told reporters that they should look into Paterson, “where massive percentages of the vote was a fraud.” The fraud involved several hundred votes; as in North Carolina, a judge ordered a new election.

Campaigns face a maddening variety of challenges as they try to change, or even fully understand, the rules of the road. The United States has arguably the most decentralized election administration of any advanced democracy. This is especially evident in the process for choosing a President. Each state conducts a separate contest for its electoral votes, with its own rules for casting and counting ballots. But there are approximately ten thousand five hundred different voting jurisdictions, many of which have their own distinctive procedures as well. The legal doctrine known as the Purcell principle, named for a Supreme Court case from 2006, holds that courts should refrain from making changes to election procedures close to Election Day, because of the potential for creating confusion for voters. (The court has never defined how close is too close.) As a result, the debates over Elias’s four pillars, and also over universal mail-in voting, are being played out in state after state at a frantic pace.

Each party has created a Web site to track the progress of election litigation around the country. The Republican site, [protectthevote.com](https://protectthevote.com), lists cases in nineteen states, and the Democratic site, [democracydocket.com](https://democracydocket.com), lists cases in twenty-eight. By one accounting, there are now more than two hundred pending lawsuits about the rules for the November election. The claims in the lawsuits vary, but there are consistent themes. The Democrats are seeking both to make it easier to vote and to relax restrictions that prevent individual ballots from being counted. The Republicans are insisting on measures that they assert will limit the number of improper or fraudulent votes.

During the first week of August, Nevada’s Democratic legislature and governor passed a substantial revision to the state’s election law, effectively creating an all-mail contest in November. The Trump campaign sued. “Many of those provisions will undermine the November election’s integrity,” the suit asserted, in a hundred-and-fourteen-page complaint. “Some go beyond that, crossing the line that separates bad policy judgments from enactments that violate federal law or the United States Constitution.”

According to Trump’s lawyers, the revised law “requires county or city clerks to count potentially fraudulent or invalid ballots, thereby diluting the votes of honest citizens and depriving them of their right to vote in violation of the Fourteenth Amendment.” In response, Elias’s team asserted that the Nevada legislature “has taken the necessary and appropriate steps to ensure that all Nevadans have safe and meaningful opportunities to vote, both during the pandemic and after.” (The case is pending.) More recently, New Jersey made a similar move to offer all residents the opportunity to vote by mail, and Republicans sued to invalidate the new rules, again asserting that the system would lead to fraud. Phil Murphy, the state’s Democratic governor, who initiated the change, said, of the Republican suit, “Bring it on.” (This case is also pending.)

There are at least five ongoing cases in Pennsylvania, several of them Republican-backed efforts to restrict “ballot harvesting.” But, even if limits are imposed, it is not clear how they would be enforced or what, exactly, they would be. Could family members drop

off one another's ballots? What about distant family members? Close friends? How close? Who would monitor that process? Democrats have filed a suit in Pennsylvania to obtain prepaid postage for absentee ballots and to relax a postmark-date requirement. In another of the Pennsylvania cases, a Republican challenge to the vote-by-mail procedures, a federal judge, J. Nicholas Ranjan, told the plaintiffs, in effect, to put up or shut up—to produce evidence of fraud “in their possession, or if they have none, state as much.” The Republican plaintiffs submitted a five-hundred-and-twenty-four-page filing that mentioned examples of fraud by voter intimidation at the polls and by the alteration of vote totals, but provided no examples of fraud in mail-in elections. (This case, too, is pending.) Last week, the Pennsylvania Supreme Court gave the Democrats an important victory, holding that the state should count all mailed-in votes that were postmarked by Election Day and permitting election officials to add more ballot drop boxes.

Some of the lawsuits involve relative minutiae. In Iowa, Republicans sued three counties that sent absentee-ballot applications to voters with their names and addresses already filled in. “We think voters should have to fill out that information themselves,” Riemer told me. (The G.O.P. won that case.) Only a handful of the lawsuits appear to have been resolved. Rhode Island waived a requirement stipulating that voters obtain the signature of a witness in order to file an absentee ballot. Republicans challenged the change. Their case was rejected in federal district court and in the First Circuit Court of Appeals, and they failed to persuade the Supreme Court to review the judgment. But, even when the Republicans fail to win in court, their lawsuits succeed in raising issues that Trump and his allies may use to claim fraud in the event that the vote count ends with Biden in the lead.

One of the ironies of the Republicans' obsession with fraud is that theirs is the party with the more significant recent history of misconduct at the polls. Shortly before the 1981 governor's race in New Jersey, the Republican National Committee created the National Ballot Security Task Force. The group consisted mostly of armed off-duty police officers hired by the G.O.P. to monitor polling sites in Black and Hispanic neighborhoods in Newark and Trenton. The group, whose members wore “NBST” armbands, posted large signs outside polling places that read “WARNING—THIS AREA IS BEING PATROLLED BY THE NATIONAL BALLOT SECURITY TASK FORCE. IT IS A CRIME TO FALSIFY A BALLOT OR TO VIOLATE ELECTION LAWS.” The task-force members challenged the right of some people to vote and blocked the way to the polls for others. In the election, the Republican, Thomas Kean, narrowly defeated the Democrat, James Florio.

The Democratic National Committee sued the R.N.C. for its role in creating the task force, and in 1982 the two sides settled the case with a so-called consent decree. The Republicans admitted no wrongdoing, but they agreed to refrain from engaging in tactics that suppressed the vote, especially those that affected minority voters. They also said they would not hire anyone to wear armbands at the polls and agreed to allow a federal court to review in advance any plans to conduct ballot-security operations at polling places. Over the years, the R.N.C. has attempted to have the consent decree lifted, arguing that it is obsolete and unnecessary, without success. Finally, in 2018, Judge John Michael Vazquez, over Democratic objections, lifted the decree.

The 2020 Presidential election will be the first in almost four decades in which Republicans will be free from the strictures of the consent decree. The Trump campaign and its allies have announced plans to hire fifty thousand poll watchers in fifteen states to monitor voting locations. Riemer told me, “The Democrats have had an unfair advantage for years because of the consent decree, and we're just trying to have a fair playing field. Our people will be well trained. They are not there to intimidate, they are not there to suppress the vote. They are there to get out the lawful vote.” But the President has suggested that the Republican poll watchers will not necessarily be so restrained. Sean Hannity, in the interview during the Democratic Convention, asked him, “Are you going to have an ability to monitor, to avoid fraud and cross-check whether or not these are registered voters—whether or not



there's been identification to know that it's a real vote from a real American?" Trump answered, "We're going to have everything. We're going to have sheriffs, and we're going to have law enforcement, and we're going to have, hopefully, U.S. Attorneys, and we're going to have everybody, and attorney generals." (The President has no authority over local officials.) Sherrilyn Ifill, the president and director-counsel of the N.A.A.C.P. Legal Defense and Education Fund, said, of the poll watchers, "We should prepare for widespread intimidation of voters at the polls and the use of dubious lists that challenge their eligibility to vote. This has long been a tool that has been recognized as a form of voter suppression. It's an utterly appalling message that no President should be sending out to the public."

In advance of the 2016 election, Roger Stone, Trump's longtime friend and adviser, organized a group called Stop the Steal, which was ostensibly intended to stop voter fraud at the polls. In response, Elias's team invoked the Ku Klux Klan Act of 1871, which prohibits private citizens from interfering with the right to vote, and won a court injunction against Stone's efforts. Elias doesn't rule out a similar lawsuit this fall. In addition, Democrats and nonpartisan civil-rights groups like Ifill's plan on being stationed at as many polling places as possible, to defend the rights of voters. In such a polarized environment, the presence at the polls of watchers with conflicting agendas presents one of the leading possibilities for conflict, if not violence, on Election Day.

Shortly after the polls close, states will begin releasing vote tallies, largely based on ballots cast at polling places. The news networks and the Associated Press are likely to be cautious about issuing projections of victory for one candidate or the other on Election Night. Instead, the vote-counting process could go on for days, if not weeks, under the constant gaze of partisans from both sides. According to Richard Hasen, a professor of law at the University of California, Irvine, "Representatives of the campaigns have the right to be present during every step. Every ballot has to be verified, every envelope has to be sealed, every voter identity checked, and the campaigns get to dispute every judgment that's made." Even if courts have clarified the procedures for casting and counting votes in each state and locality, the possibilities for disputes arising as those rules are applied to the actual ballots are nearly endless. How closely must the signature on an absentee ballot match that on the voter-registration form? What happens if a voter clearly indicates her intent—say, by circling a candidate's name—but fails to fill in the correct bubble on the form?

New York's Democratic primaries, on June 23rd—among the first major contested elections to take place during the pandemic—offered a modest preview of the chaos we could see after November 3rd. In those races, landslides were called quickly and without controversy. But the process of resolving the closer contests was long and agonizing. I observed one of them at a Board of Elections counting center, on West Thirty-first Street, in Manhattan. The main race still in dispute was the Democratic primary between Carolyn Maloney, the longtime representative from a district that includes the East Side of Manhattan and slivers of Brooklyn and Queens, and Suraj Patel, a young businessman and activist. Turnout was high for a primary. Patel had also challenged Maloney in 2018—about forty-four thousand people voted in that election. This year, the tally on Election Night put Maloney ahead by six hundred and forty-eight votes, 1.6 per cent, but more than sixty-five thousand votes had been cast by mail, and, two weeks later, none of those had yet been counted. In a typical pre-pandemic race in New York State, about ninety-five per cent of voters cast their ballots in person. This year, it is estimated that between forty and sixty per cent will vote by mail. (In Illinois, more than 1.1 million people had applied for absentee ballots by August; in 2018, only four hundred and thirty thousand people in the state voted absentee.)

The magnitude of the challenge for election officials was evident as soon as I entered the counting room, which took up most of the eighth floor of a large office building. There were about twenty counting tables, set at least six feet apart. Two board staffers sat

at each table, and they were monitored by representatives from both campaigns; everyone was masked. At the tables, people tried to maintain social distance—mostly in vain, since they were all squinting at the same ballots. The staffers first compared the signatures on the envelopes with the ones in the registration book, and then inspected the ballots themselves. The pace was glacial. At first, staffers counted just two hundred ballots a day, though after a week or so the pace quickened to about eight hundred a day. Still, the initial count took more than a month.

New York, which is heavily Democratic, is unlikely to be competitive in the Presidential election, but there is every reason to believe that the count in the Maloney-Patel race will be simple and straightforward compared to what might happen around the country in the Presidential contest. Based on previous trends, at least twice as many people will vote in November as voted in the June primary; that means at least double the number of absentee ballots to count. In the case of a close race, a recount—in which each side could contest the validity of each ballot—would certainly go on for longer than the month-plus that it took for Maloney to declare victory.

As the New York race also demonstrated, mailed ballots have a markedly higher rate of disqualification. About twenty per cent of the ballots from Manhattan and Queens, and nearly thirty per cent of those from Brooklyn were disqualified—many because voters didn't sign the envelopes of the absentee ballots, or because they sealed the envelope with tape rather than with moisture. The Postal Service had failed to apply postmarks to many of the absentee ballots, so the Board of Elections disallowed all those that were received after Election Day. Patel successfully sued in federal court to have more ballots counted, especially those without postmarks. But by that point, in early August, Maloney's lead had grown to four per cent, and the Associated Press called the race for her. (Patel conceded on August 27th.) "The Democrats want to blame Trump and the Republicans for all the problems with voting, and claim that it's vote suppression," Samuel Issacharoff, a professor at New York University School of Law, told me. "But the Republicans had nothing to do with the fiasco in New York. The Democrats made all the rules there. There was no conspiracy—the system is just not set up to absorb that many absentee ballots and count them in a reasonable period of time."

The high disqualification rate for absentee ballots poses a special peril for Democrats. According to a study co-written by Daniel Smith, a professor at the University of Florida Law School, the mail-in ballots of racial and ethnic minorities, and also of young voters, were rejected at a substantially higher rate than those of older white voters across counties, even though the counties varied in the over-all rate at which they rejected ballots. High disqualification rates for mail-in votes were evident in 2020 races around the country. According to studies by the *Washington Post* and NPR, during the primaries, mailed ballots were disqualified at a far higher rate than in 2016—five hundred thousand in total were deemed invalid. (By comparison, about three hundred and eighteen thousand ballots were disqualified in the 2016 general election.) Franita Tolson, a professor at the U.S.C. Gould School of Law, told me, "You will still see many claims that absentee ballots have been wrongly rejected, and those will lead to court cases. The fact that we are generating lots of voting by mail will generate a lot of litigation."

Daniel Smith said, "Ultimately, in Florida, it may all come down to the three-member Canvassing Boards, who will decide whether each vote counts. This time, they won't be staring at chads but comparing signatures and deciding if they match."

In the days following Election Night, there is likely to be an increasing disparity between the initial poll tallies and the numbers that include mail-in votes. This is not exactly new. According to Edward B. Foley, a professor at the Ohio State University Moritz College of Law, for most of the twentieth century, the preliminary count on Election Night was about ninety-nine per cent of the total count, but, even before COVID, "a new normal developed, because of greater reliance on vote by mail." For example, on Election Night in 2018, the Republican Martha McSally led the Democrat Kyrsten Sinema by one per cent in the Arizona Senate

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race. But there were still about six hundred thousand votes to be counted, a quarter of the total number, and, once they were, it was clear that Sinema had won comfortably, by about fifty-five thousand votes. This year, with more mail-in votes, a blue shift is likely to take place in nearly every state.

Voters in nine states will get their ballots mailed to them directly by default, and thirty-six states will offer no-excuse absentee voting—that is, voters will be allowed to choose to vote by mail without having to give a reason. These include two major swing states, Pennsylvania and Michigan. In the past four Presidential elections, Foley explained, Pennsylvania experienced a blue shift of about twenty thousand votes: “That was before COVID and before the state moved to no-excuse absentee voting, so that means there will be a great deal more mail-in votes this year than in the past.” (In the Pennsylvania Democratic primary, in June, which had a low turnout because the Presidential nomination had already been decided, it took more than two weeks to count the votes.)

There is nothing sinister about the fact that Democrats use mail-in voting more than Republicans do. Foley’s concern is that Trump will claim that the blue shift, if it occurs, is evidence of partisan foul play, particularly if it eliminates an apparent Election Night lead in an important state. (Some Democrats have deemed a possible Trump lead on Election Night the “red mirage.”) “If the votes keep shifting, Trump may demand that the Election Night numbers be certified, because he doesn’t trust the mail-ins,” Foley said. In 2018, after a blue shift narrowed the Election Night leads of Republican statewide candidates in Florida, Trump tweeted, “The Florida Election should be called in favor of Rick Scott and Ron DeSantis in that large numbers of new ballots showed up out of nowhere, and many ballots are missing or forged. An honest vote count is no longer possible—ballots massively infected. Must go with Election Night.”

The prospect of a blue shift, and Trump’s reaction to it, is one reason that Michael Bloomberg decided to spend a hundred million dollars to help Biden in Florida. “In swing states like Michigan, Pennsylvania, and Wisconsin, they count their Election Day votes first and then the mail-in votes, so it’s entirely possible that Trump will be ahead there,” Howard Wolfson, a senior political adviser to Bloomberg, told me. “Trump has no respect for decorum or tradition, so we assume that he will just claim victory at that point and argue that any ballots that come in after that point are fraudulent.” Florida, on the other hand, counts mail-in votes as they arrive, so the Election Night total may well come close to the state’s final result. Wolfson explained, “Florida is obviously very close, and it’s a state that Trump really has to win to get to two hundred and seventy electoral votes. If we can show that he lost Florida on Election Night, it makes it pretty much impossible for him to claim victory in the election. That was a huge factor in why we decided to invest in Florida.”

**I**t took a Supreme Court ruling to conclude the Presidential race in 2000—and there is an additional set of procedures that may come into play in 2020. They have roots in an even more controversial Presidential election, which took place in 1876. That year, on the night of November 7th, it appeared that Samuel J. Tilden, the Democrat, had defeated Rutherford B. Hayes, the Republican. But the results in several Republican-dominated states had not yet been reported. The vote was especially close in Florida. Shortly before the Electoral College was to meet, in December, the Florida Canvassing Board certified electors pledged to Hayes, but the state’s attorney general certified Tilden as the winner. Louisiana and South Carolina also sent contradictory certifications to Washington. Because neither candidate commanded a clear Electoral College majority, Congress improvised a solution, establishing an electoral commission of five senators, five House members, and five Justices of the Supreme Court. A few days before Inauguration Day, 1877, the commission voted eight to seven to award the Presidency to Hayes. Republicans like Hayes had established Reconstruction in the South after the Civil War, but, as part of the deal that made him President, Hayes agreed to end Reconstruction, with disastrous implications for African-Americans.

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Foley told me, “Congress knew that what happened in 1876 was a disaster, an embarrassment, and then there were two more close elections, in 1880 and 1884, so they realized they really had to do something about it.” As a result, Congress passed the Electoral Count Act of 1887, which purported to establish a procedure for resolving disputed Presidential elections. The statute was, Foley said, “a placeholder, better than nothing, which they figured would be improved over time. But Congress has never returned to the issue, and the law has never really been tested. No one really knows what it means.”

There does seem to be general agreement on one provision of the 1887 act: the “safe harbor” clause. It provides that, if a state submits its final tally in the Presidential contest by six days before the meeting of the Electoral College, that decision is “conclusive” and thus free from legal challenge. This year, the safe-harbor deadline is December 8th; the Electoral College meets in each state capitol on December 14th.

It is unclear, however, what will happen if a slow vote count puts a state in jeopardy of missing the deadline. The Court’s opinion in *Bush v. Gore* provides one possibility, based on Article II of the Constitution, which says that the states must appoint electors “in such Manner as the Legislature thereof may direct.” In its *Bush v. Gore* opinion, the Court observed that, in the early days of the Republic, the state legislatures, not the voters, selected the Presidential electors in some states. Thus, the opinion went on, “the State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors.” The bland legal language obscures the magnitude of this conclusion. It means that a state legislature can simply ignore the votes cast by the state’s citizens and award its Presidential electors to the candidate of its choice. “This is the most frightening prospect of all,” Issacharoff said. “It’s a deep confrontation with the idea that we as citizens have the right to vote for President.”

In 2000, Republicans in the Florida legislature had been planning to invoke this constitutional provision if the length of the recount jeopardized the state’s ability to submit electors in time to be counted. But, to date, no state in the modern era has attempted to preempt its voters in this way. Still, the Constitution can arguably be read to give legislatures the power to do so. It’s even conceivable that, if President Trump claimed that a Biden victory in a state was based on fraud, a Republican legislature could overturn the result. If a legislature wanted to try this maneuver—to award its state’s Electoral College votes on its own—could the governor veto it?

In four crucial swing states—Michigan, North Carolina, Pennsylvania, and Wisconsin—there is a Republican legislature and a Democratic governor. The Constitution speaks only of the legislature, and the answer appears to be that the governor would have no role—but no one knows for sure. The 1887 act also says that, after a state makes a “final ascertainment” of its results, the governor must send a certification to the Archivist of the United States. If the governor refused to do so—or sent a certification of a result that conflicted with the legislature’s, or the courts’, determination—would that action invalidate the certification by the legislature? No one knows. In any case, it appears clear that, if a state fails to submit a winner by December 14th, the decision about its electoral votes goes to Congress.

The 1887 act appears to offer some guidance on the question of what Congress might then do—but not much. “I defy you to read the law and understand it,” Foley said. “I’ve been working on it for a decade, and I still don’t understand it completely. It’s just a morass.” The law mandates that both Houses of Congress meet in a joint session—scheduled, this cycle, for January 6, 2021—to certify the Electoral College tally. At that meeting, there can be a challenge to the counting of votes if at least one representative and one senator offer it. At the joint session in 2001, several House members sought to challenge Bush’s victory over Gore, but no senator joined them. Thus, Vice-President Gore, as the presiding officer, was obliged to rule the challenges to his defeat out of



order. Michael Moore, in his documentary “Fahrenheit 9/11,” included excerpts from the joint session, using the failure of even a single Democratic senator to challenge Bush’s victory as a symbol of the Party’s spinelessness.

So what happens if, unlike with the 2000 election, at least one senator joins a House member to challenge the electoral-vote results in a state? The law offers minimal guidance. One thing is clear: the House and the Senate would have separate proceedings, and vote separately, on which electors to seat in the contested states. With the result of the election on the line, the level of contention would be extraordinary. Would there be hearings? Would witnesses testify? How long would the House and the Senate debate the issue? No one knows.

The complexities accumulate. It’s possible that some states, if their results are tied up in the courts, might not submit *any* electors to Congress. What happens if there are fewer than five hundred and thirty-eight electoral votes cast? As Charles Stewart III, a professor of political science at the Massachusetts Institute of Technology, said, “Do you need a majority of those cast, or do you need two hundred and seventy? That is not clear.” And what if the House approves one slate of electors and the Senate approves a different one? Since Democrats now control the House and Republicans the Senate, such a scenario seems possible, even likely. According to Stewart, in the event of a conflict between the House and the Senate over which slate to approve, the Electoral Count Act says that the one signed by the governor of the state prevails. (If the Democrats retake the Senate in November, the chances of conflict between the House and Senate will be lessened, because this vote will occur after the third of the year, when the new senators will be seated.)

Another hypothetical: after the House and the Senate rule on the challenges, neither candidate obtains either two hundred and seventy electoral votes or a majority of those votes cast. Then the final decision would belong to the House of Representatives. The vote in the House would take place not in the usual fashion, by members of Congress, but, rather, by delegation. In other words, each state would get one vote in the House, based on a majority vote of the members of the state’s delegation. If it comes to this, the result seems clear. Republicans control twenty-six delegations in the House, and Democrats control twenty-three. Trump would win the election. “Sometimes, when I think about this stuff, I have to go take a nap, because it’s so convoluted,” Stewart said.

Bob Bauer, the veteran Democratic lawyer, is not inclined to hysteria. “I don’t portray the situation as a catastrophe, because all that does is scare away voters,” he said, of the upcoming election. “But it is true that it’s an unparalleled challenge, because we have a frail election infrastructure in the best of circumstances, and now the pandemic is layered on top.” One of Bauer’s concerns is outside the control of either campaign—that foreign powers would engage in cyberterrorism on Election Day and afterward. “There’s a risk of cyber insecurity, with the possibility that foreign actors will try to interfere with the process,” he said. The specific possibilities include hacking into voter-registration databases and vote-counting software, and a full-fledged attack on the electric power grid. Bauer went on, “But there’s a higher risk that they will try to convince people that they’ve interfered with the process and create confusion that way.”

There’s an extreme imbalance in party resources when it comes to information about possible foreign interference, because the President controls the nation’s intelligence apparatus. In a public statement on August 7th, the Office of the Director of National Intelligence asserted that China, Russia, and Iran were already attempting to interfere in the election. Russia’s extensive efforts on Trump’s behalf in 2016 have long been documented, and, according to the statement, they are continuing in 2020: “Russia is using a range of measures to primarily denigrate former Vice President Biden.” Other possible foreign efforts “seek to compromise our

election infrastructure for a range of possible purposes, such as interfering with the voting process, stealing sensitive data, or calling into question the validity of the election results.”

Later that month, the Trump Administration shut down some access to information about these foreign efforts, asserting without evidence that there had been leaks in previous briefings. In a series of letters to congressional leaders on August 29th, John Ratcliffe, whom Trump recently named the director of National Intelligence, after his service as a Republican representative from Texas, announced that he would cease in-person briefings about “election security, foreign malign influence, and election interference,” and instead supply only written reports. Democrats were indignant about being unable to question intelligence officials before the election. “President Trump, through his hand-picked DNI—chosen for loyalty, not experience—is attempting to deprive Congress of the information they need to do their part,” Biden said in a statement. “There can be only one conclusion: President Trump is hoping Vladimir Putin will once more boost his candidacy and cover his horrific failures to lead our country through the multiple crises we are facing.” Last week, Ratcliffe reversed course and agreed to provide some in-person briefings to Congress, but Democrats will still head into the election substantially in the dark about how foreign powers may attempt to manipulate the outcome.

As Election Day approaches, the President has escalated his level of incitement. With the death of Supreme Court Justice Ruth Bader Ginsburg, last week, a battle with the Democrats in the Senate is almost inevitable. Trump has already moved from allegations of fraud to intimations of unlawfulness and violence. “Gotta be careful with those ballots,” he said on September 8th, in a speech in North Carolina. “Watch those ballots. I don’t like it.” He continued, “Be poll watchers when you go there. Watch all the thieving and stealing and robbing they do.” Trump has advised his supporters to vote twice—once by absentee and once at the polls, to make sure their votes count. (This would be a crime.) He has expressed sympathy for the anti-Black Lives Matter counter-protesters who fired paintballs at their adversaries in Portland, and has defended Kyle Rittenhouse, the pro-Trump vigilante who is accused of killing two protesters in Kenosha, Wisconsin. Trump also retweeted a prediction that political unrest “could lead to ‘rise of citizen militias around the country.’” In light of these provocations, it seems that anything short of a landslide for either Biden or Trump could lead to chaos. It’s unsurprising that, when the Transition Integrity Project, a group of a hundred bipartisan experts, ran a series of simulations, they concluded that “the potential for violent conflict is high, particularly since Trump encourages his supporters to take up arms.”

One Republican, perhaps the one most knowledgeable about how elections really work, has decided that Trump has gone too far. Earlier this month, Benjamin Ginsberg, the scourge of the Gore forces in Florida, wrote an op-ed in the *Washington Post*, calling out Trump’s baseless provocations about the election. “I spent 38 years in the GOP’s legal trenches,” he wrote. “I was part of the 1990s redistricting that ended 40 years of Democratic control and brought 30 years of GOP successes in Congress and state legislatures. I played a central role in the 2000 Florida recount and several dozen Senate, House and state contests.” Ginsberg denounced Trump’s encouragement of double voting and rejected the President’s claim of widespread voter fraud: “The truth is that after decades of looking for illegal voting, there’s no proof of widespread fraud. . . . Elections are not rigged.”

Ginsberg told me, “I was a tough partisan and proud of it—but I think it’s important for Republicans and Democrats to look at the real evidence of what’s happened over forty years. Unfortunately, Republicans have gotten away from that during this cycle.” For decades, Republican candidates depended on Ginsberg for his counsel and his advice, but there is every sign that he, like all apostates from the cause of Trump, will be ignored and scorned by the President and his allies. Instead, it will be Trump’s party that sets the path to Election Day, and beyond. ♦

An earlier version of this article misrepresented the office James Florio held in 1981.

## READ MORE ABOUT THE 2020 ELECTION

- Can Joe Biden win the Presidency based on a promise of generational change?
- The fall and rise of Kamala Harris.
- When a sitting President threatens to delay a sacrosanct American ritual like an election, you should listen.
- To understand the path Donald Trump has taken to the 2020 election, look at what he has provided the executive class.
- What happens if Trump  fights the election results?
- The refusal by Mitch McConnell to rein in Trump is looking riskier than ever.
- Sign up for our election newsletter for insight and analysis from our reporters and columnists.

*Published in the print edition of the September 28, 2020, issue, with the headline "What Comes Next."*



*Jeffrey Toobin is a staff writer at The New Yorker and the chief legal analyst for CNN. His most recent book is "True Crimes and Misdemeanors: The Investigation of Donald Trump."*

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# EXHIBIT 2



Culture

## How Republicans Tried to Rig an Election in North Carolina (And Almost Got Away With It)

It's been nine months, and the district still doesn't have a congressional representative. But voters head to the polls again soon.

BY JAY WILLIS

September 6, 2019

Although the 2018 midterms took place ten months ago, one district in the country has gone without an elected congressperson since the new Congress convened in January. On Tuesday, voters of North Carolina's ninth district will head back to the polls to elect a representative after months of unraveling electoral chicanery.

The district, which extends southeast from the Charlotte suburbs along the state's border with South Carolina, held an election last November, just like everyone else. It was a close one: Republican Mark Harris, a far-right candidate who defeated Republican incumbent Robert Pittenger in a primary challenge in the spring, defeated Democrat Dan McCready, a then 35-year-old U.S. Marines veteran, by 905 votes out of more than 282,000 cast.

In the weeks that followed, though, state officials uncovered a number of peculiar patterns among mail-in ballots: In all but one of the district's counties, McCready won handily among these absentee voters, by 16 points. But in Bladen County, he lost by a whopping 24 points. Journalists discovered that the same names appeared on many of these absentee ballots as "witnesses," and listed the same one-bedroom apartment as their address.

In other words, either a small group of benevolent democracy enthusiasts rented a place together and then traveled all over Bladen County to help strangers vote—or someone, somewhere was cheating. In late November, the North Carolina State Board of Elections voted to delay certification of the result until it could figure out what, exactly, had gone awry here.

The answer, it turned out, involved one Leslie McRae Dowless Jr., a longtime fixture of Bladen County politics who worked as a contractor for Mark Harris's campaign. And Dowless, it turned out, paid a team to go door-to-door in mostly rural areas, collect unfinished absentee ballots from unsuspecting voters, and bring them to him for completion. In a series of sworn affidavits, witnesses stated that Dowless described himself as "doing absentee" for Harris, and bragged that he was being paid in cash.

<https://twitter.com/BowTiePolitics/status/1069731637062184960>

It appears that Dowless ran versions of this grift in previous contests, too. Since 2010, officials received at least a half-dozen complaints about his shady practices in the region, according to the AP. In the 2016 GOP primary, the candidate for whom Dowless worked won 98 percent of Bladen County absentee-by-mail votes, as documented by WSOC-TV reporter Joe Bruno. Two years later, when Harris won the 2018 primary, he took home 96 percent of absentee-by-mail votes in—where else?—Bladen County. (In retrospect, it is good for democracy that officials eventually uncovered Dowless's operation, but kind of embarrassing that it took them this long to do it.)

The Board of Elections' efforts to look into all this were complicated by the fact that in December, a court order dissolved it as part of a *separate* legal battle over the Board's composition and jurisdiction. North Carolina's governor, Democrat Roy Cooper, wasn't able to convene a new board until late January. In the meantime, the race entered a weird state of political limbo. Harris argued that he should be allowed to serve in Congress pending the investigation's results, and sued to compel certification in January. A state court judge, however, ruled that a hypothetical future Board, not a court, would be "in the best position to weigh the legal and factual issues" of the case.

When that new Board finally held a hearing in February, state officials characterized Dowless's scheme as a "coordinated, unlawful, and substantially-resourced" one. It apparently worked by getting voters to request absentee ballots, and then attempting to harvest and tamper with those ballots prior to their completion by the actual voter. According to the *Charlotte Observer*, the Harris campaign paid Dowless, through a consulting firm called the Red Dome Group, \$4 per absentee ballot request in the primary and \$5 per absentee ballot request in the general.

In all, the Red Dome Group paid Dowless \$131,375, the *Observer* says; all but around \$18,000 of that sum related to his work for Harris. Red Dome Group owner Andy Yates admitted that he didn't perform a background check on Dowless, which would have revealed a prior felony conviction for fraud, and failed to use Dowless's full name when he ran a cursory Google search. (Dowless often goes by his middle name, McRae.)

At the time, Dowless assured skeptics that his employees didn't physically handle ballots—a felony in North Carolina. But his stepdaughter, Lisa Britt, testified under oath that she indeed collected and filled in ballots at his direction, and that he increased her pay at one point because, as she sagely observed, "A lot of people don't want to give you their



10/12/2020

How Republicans Tried to Rig an Election in North Carolina (and Almost Got Away With It)

absentee ballot.” Britt also revealed that Dowless, in an incredible display of electioneering chutzpah, urged her before her testimony to state only that Dowless had never asked her to do anything illegal, and otherwise to plead the Fifth. Dowless himself declined to testify, but this bit of casual tampering, presumably, did not help his case.

A critical unresolved question is whether Mark Harris knew what Dowless was doing on his behalf. The circumstantial evidence, at least, is not encouraging: Harris’s son, a federal prosecutor, warned his father in a series of e-mails about statistical oddities in previous elections in which Dowless was involved. In one message, the younger Harris even included a citation to the North Carolina statute that prohibits anyone from taking possession of another’s absentee ballot.

In any event, Harris’s knowledge of cheating is irrelevant to whether he benefited from it. As the hearing dragged on, an emotional Harris shocked observers when he, too, called for a new election, effectively ending the inquiry before the extent of his knowledge was ever established. In an interview on *Rigging North Carolina*, a recent podcast series covering the scandal, longtime Democratic Party attorney Marc Elias speculated that Harris’s abrupt reversal may have been motivated by a desire to avoid incriminating himself or lying under oath.

At the hearing’s conclusion, the State Board of Elections accepted Harris’s new-election suggestion by a unanimous decision. A week later, Dowless and several co-conspirators were arrested on charges of conspiracy and illegal ballot handling. In July, prosecutors brought obstruction-of-justice and perjury charges against Dowless, too. A separate Department of Justice investigation into the matter remains ongoing.

Harris declined to seek the Republican nomination this time around, citing ongoing health issues. McCready, however, is running again for the seat he thought he’d lost. This time, his opponent is Dan Bishop, a state legislator most famous for spearheading H.B. 2, better known as North Carolina’s “bathroom bill.” That law barred transgender individuals in government buildings from using the restrooms of the gender with which they identify; the legislature repealed it in March 2017 after a national backlash that culminated with the NCAA’s decision to pull scheduled March Madness games from the state in protest.

As the *Charlotte Observer* reported last October, before both the 2018 midterms and Bishop’s congressional candidacy, he was also notable for bragging about investing in Gab, an alternative social-media network popular with white supremacists and neo-Nazis. (“I’m about done with SF thought police tech giants’ Big Brother routine,” he wrote on, of all places, Facebook. “Free markets are the answer to many kinds of tyranny.”) Bishop posted proudly about his investment with Gab in August 2017, less than a week after white supremacists and neo-Nazis murdered a counter-protester in Charlottesville, Virginia.

In July, a McCready campaign internal poll showed the two candidates tied at 46 percent. A more recent poll shows McCready holding a slight 46-42 lead over Bishop—about equal to the 4.15-point margin of error. But the fact that this race is competitive at all is encouraging for Democrats in North Carolina. No Democrat has represented the ninth district since 1963, thanks in part to the Republican Party’s efforts to gerrymander the state’s congressional districts to ensure a permanent partisan advantage. They have not been shy about this goal, either. “I propose that we draw the maps to give a partisan advantage to 10 Republicans and three Democrats,” said state representative Dave Lewis during a hearing in 2016, “because I do not believe it’s possible to draw a map with 11 Republicans and two Democrats.” If McCready were to win, in other words, he’d do so in spite of a deck stacked heavily against him.

Future elections in North Carolina might not be such uphill battles for Democrats like McCready, either. Earlier this summer, the U.S. Supreme Court’s five-member conservative majority rejected a challenge to the state’s congressional districts, concluding that the line-drawing process is a political question beyond the ken of the federal judiciary. It noted, however, that state courts were free to decide differently.



Sure enough, earlier this week, a three-judge panel in North Carolina stuck down the state's legislative district map, concluding in a sweeping 357-page opinion that the advantage it conferred on Republicans violated the North Carolina constitution's guarantees of, among other things, free speech and equal protection. Although the ruling does not apply to *congressional* districts, NBC News reports that with this decision in hand, activists are thinking about challenging those maps, too—perhaps even in time for the 2020 election.

It is of course revealing that the Republican Party, whose president floated the baseless allegation that between three and five million people voted illegally in an election *he won*, is responsible for an actual, documented case of stealing votes. But calling Dowless's operation "voter fraud" isn't really accurate, because that term refers to the alleged attempts *of voters* to swing an election result: casting ballots where they don't live, for example, or impersonating someone else at the ballot box. Here, voters were the victims of a partisan plot to further rig an already rigged system. This is a fraud on the entire democratic process, and those responsible very nearly got away with it.



## How Trump Remade the EPA into a Pollution Green-Lighting Agency

Drastic deregulation of methane leaks and other greenhouse gases helps oil and gas companies, but not the climate.

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# EXHIBIT 3



**COMMISSIONER ELLEN L. WEINTRAUB**  
**FEDERAL ELECTION COMMISSION**  
**WASHINGTON, D.C. 20463**

## **FACTS ABOUT VOTING BY MAIL**

May 27, 2020

• • • •

The week, I posted 66 tweets setting forth some facts about the safety and integrity of voting by mail.  
For ease of reading, I have compiled them into this document.

<https://twitter.com/EllenLWeintraub/status/1265841303012638725>

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

Thread! Buckle up.

[1/](#) It's been claimed that voting by mail leads to massive corruption and fraud. But what are the facts?

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[2/](#) U.S. citizens will vote by mail this year in record numbers. In the face of a global health emergency, election officials across the country from both parties are working heroically to ensure that voting by mail is accurate, accessible, safe & secure.

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[3/](#) There's simply no basis for the conspiracy theory that voting by mail causes fraud. None.

@CNN & @washingtonpost fact-checks show this. But many others have examined the issue and arrived at the same conclusion. Still others have provided some key context. Take a look!

*Facts About Voting by Mail*  
*Commissioner Ellen L. Weintraub*  
*May 27, 2020*

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

4/ Here is @CNN's fact-check, cited by @Twitter:

<https://www.cnn.com/2020/05/26/politics/mail-in-ballot-vote-by-mail-trump/index.html>

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

5/ And here is @washingtonpost's fact-check, also cited by @Twitter:

<https://www.washingtonpost.com/politics/2020/05/26/review-trumps-many-unsubstantiated-allegations-voter-fraud/>

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

6/ And here are a few more:

@CBSNews political reporter @Grace\_Segers:

[https://twitter.com/Grace\\_Segers/status/1265264320860114946](https://twitter.com/Grace_Segers/status/1265264320860114946)



**Grace Segers** ✓  
@Grace\_Segers

1. Mail voting fraud is extremely rare, and some experts consider it to be safer than in-person voting because paper ballots can't be hacked.
2. Most studies find that voting by mail doesn't help one party over another.
3. President Trump voted by mail in the Florida primary.



**Donald J. Trump** ✓ @realDonaldTrump · May 26

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone.....

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8:51 AM · May 26, 2020 · [TweetDeck](#)

• • • •

*Facts About Voting by Mail*  
*Commissioner Ellen L. Weintraub*  
*May 27, 2020*



**Ellen L. Weintraub**  
@EllenLWeintraub

[7/](#) @NBCNews:

<https://twitter.com/NBCNews/status/1249661161693462529>



• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

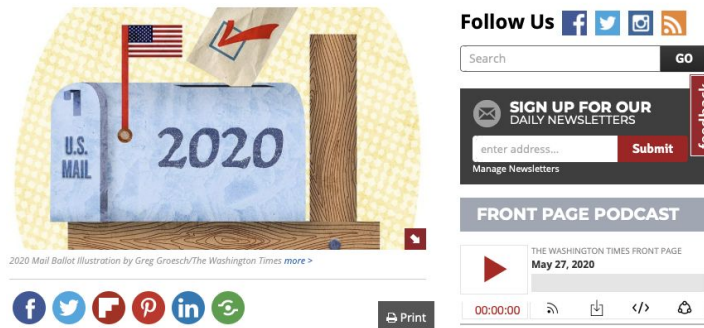
[8/](#) @MichaelSteele & @elilehrerc for @WashTimes:

<https://www.washingtontimes.com/news/2020/mar/24/conservatives-must-get-behind-vote-by-mail-options/>

*Facts About Voting by Mail*  
*Commissioner Ellen L. Weintraub*  
*May 27, 2020*

## Conservatives need to get behind vote-by-mail options in 2020 election

Systems save money, don't require waiting in line and are immune from large-scale fraud



• • • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

9/ @atrupar for @voxdotcom:

<https://twitter.com/atrupar/status/1265266762079186946>



**Aaron Rupar** ✓  
@atrupar

Five states, including deep red Utah, already conduct elections almost entirely by mail, and only evidence of mail-in election fraud Trump has been able to cite is a "pants on fire" lie [vox.com/2020/4/8/21213...](https://www.vox.com/2020/4/8/21213...)



**Donald J. Trump** ✓ @realDonaldTrump · May 26

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone.....

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9:01 AM · May 26, 2020 · Twitter Web Client

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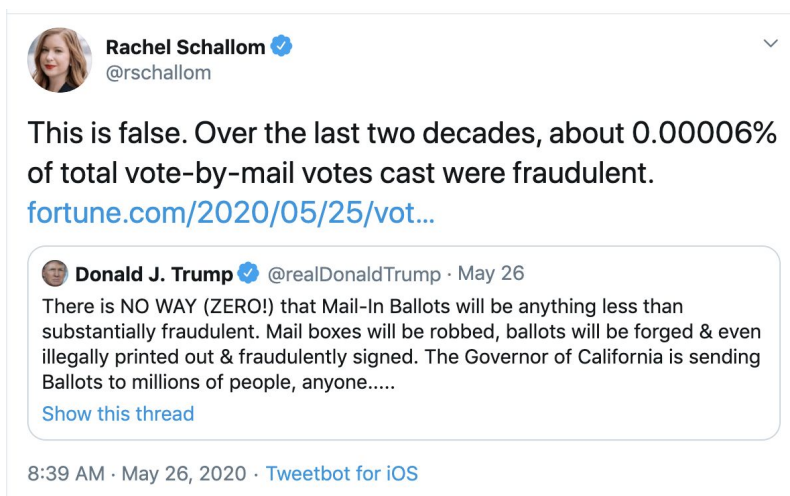


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@EllenLWeintraub

10/ @RSchallom for @FortuneMagazine:

<https://twitter.com/rschallom/status/1265261179347353600>

*Facts About Voting by Mail*  
*Commissioner Ellen L. Weintraub*  
*May 27, 2020*



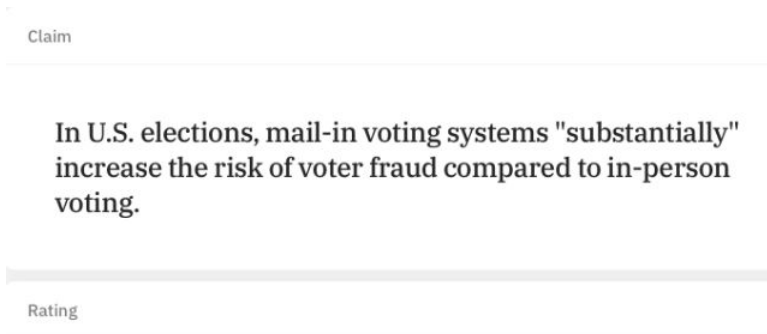
• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[11/](#) @byjlee fact-check for @snopes:

<https://www.snopes.com/fact-check/mail-in-ballot-voter-fraud/>



**Mostly False**  
*About this rating* [↗](#)

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[12/](#) @JBendery for @huffpost:



*Facts About Voting by Mail*  
*Commissioner Ellen L. Weintraub*  
*May 27, 2020*

<https://twitter.com/jbendery/status/1265263129887457280>



**Jennifer Bendery** ✓  
@jbendery

Oregon has been voting \*entirely\* by mail since 1998. Gov. Kate Brown said it makes her blood boil to hear Trump's fearmongering about fraud as it is "virtually nonexistent."

"He doesn't know what he's talking about."

[huffpost.com/entry/oregon-g...](https://huffpost.com/entry/oregon-g...)



**Donald J. Trump** ✓ @realDonaldTrump · May 26

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone.....

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**Ellen L. Weintraub**  
@EllenLWeintraub

[13/](#) @ACLUofNE:

<https://twitter.com/ACLUofNE/status/1265262029159497730>



**ACLU of Nebraska** ✓  
@ACLUofNE

80% of Nebraskans who voted in our May primary voted by mail. Voting by mail is secure. It's effective. It led to record turnout.



**Donald J. Trump** ✓ @realDonaldTrump · May 26

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone.....

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*Facts About Voting by Mail*  
 Commissioner Ellen L. Weintraub  
 May 27, 2020



**Ellen L. Weintraub**  
 @EllenLWeintraub

**14/** U.S. Election Assistance Commission White Paper: Deep Dive on Early, Absentee, and Mail Voting (@EACGov):

<https://www.eac.gov/documents/2017/10/17/eavs-deep-dive-early-absentee-and-mail-voting-data-statutory-overview>



## DOCUMENTS

WHITE PAPER

### EAVS DEEP DIVE: EARLY, ABSENTEE AND MAIL VOTING

Posted: Oct 17, 2017

The EAC administers the biennial Election Administration and Voting Survey (EAVS) to collect state-by-state data on the administration of federal elections. In June of 2017, the EAC released the most recent survey with data from the 2016 election.

*This survey contains the most comprehensive data about trends in election administration in the United States and provides these numbers at the national, state, and local level. This brief is part of a series of "deep dives" into the EAVS data that will provide an in-depth look at a variety of issues related to administering elections and use data to help better understand these issues.*

• • • •



**Ellen L. Weintraub**  
 @EllenLWeintraub

**15/** @srl for @GuardianUS:

<https://twitter.com/srl/status/1265277183272062976>



**Sam Levine** ✓  
 @srl

This is false. California is not mailing a ballot to "anyone living in the state, no matter who they are or how they got there." The state is sending ballots to voters who are registered in California: [gov.ca.gov/2020/05/08/gov...](https://gov.ca.gov/2020/05/08/gov...)



**Donald J. Trump** ✓ @realDonaldTrump · May 26

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone.....

[Show this thread](#)

9:42 AM · May 26, 2020 · TweetDeck

• • • •

*Facts About Voting by Mail*  
*Commissioner Ellen L. Weintraub*  
*May 27, 2020*



**Ellen L. Weintraub**  
@EllenLWeintraub

**16/** Thread from @brennancenter & @NYULaw Professor Michael Li (@mcpli):

<https://twitter.com/mcpli/status/1264583397864808455>



**Michael Li 李之模**  
@mcpli

Bless his heart. He has no idea how mail ballots work (though he should since he votes by mail). There are a couple of key layers of security. 1/



**Donald J. Trump**  
@realDonaldTrump

The United States cannot have all Mail In Ballots. It will be the greatest Rigged Election in history. People grab them from mailboxes, print thousands of forgeries and "force" people to sign. Also, forge names. Some absentee OK, when necessary. Trying to use Covid for this Scam!

10:08 AM · 5/24/20 · Twitter for iPhone

11:45 AM · May 24, 2020 · Twitter for iPhone

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

**17/** All types of voter fraud in U.S. elections are minuscule in comparison to the number of ballots cast, according to elections experts (@brennancenter):

<https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>

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• • • •



**Ellen L Weintraub**  
@EllenLWeintraub

[18/](#) @Reuters poll finds that 72% of all U.S. adults, including 65% of Republicans, support a requirement for mail-in ballots to protect voters (@Cmkahn):

<https://www.reuters.com/article/us-usa-election-poll/most-americans-unlike-trump-want-mail-in-ballots-for-november-if-coronavirus-threatens-reuters-ipsos-poll-idUSKBN21P3G0>

POLITICS

APRIL 7, 2020 / 6:53 PM / 2 MONTHS AGO

## Most Americans, unlike Trump, want mail-in ballots for November if coronavirus threatens: Reuters/Ipsos poll

Chris Kahn

3 MIN READ



• • • •



**Ellen L Weintraub**  
@EllenLWeintraub

[19/](#) @IssueOneReform Co-Chair @IOWamp (Former Rep. R-TN):

<https://twitter.com/IOWamp/status/1265608087265857536>

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*Commissioner Ellen L. Weintraub*  
*May 27, 2020*



**Zach Wamp**  
@IOWamp

Huuuuge difference between "everyone has to vote by mail" and "many people need to vote absentee because of Covid" @realDonaldTrump -the states need resources but they are capable of doing this securely+should under the constitution. #CountryOverParty



**Donald J. Trump** @realDonaldTrump · May 27

....happen again. Just like we can't let large scale Mail-In Ballots take root in our Country. It would be a free for all on cheating, forgery and the theft of Ballots. Whoever cheated the most would win. Likewise, Social Media. Clean up your act, NOW!!!!

[Show this thread](#)

7:37 AM · May 27, 2020 · Twitter for iPhone

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[20/](#) In 2016, roughly 1 in 4 voters cast their votes via mail-in ballot (@voteathome):

[https://docs.wixstatic.com/ugd/ef45f5\\_81a3affd554e4b5b9b5852f8fb3c10fd.pdf](https://docs.wixstatic.com/ugd/ef45f5_81a3affd554e4b5b9b5852f8fb3c10fd.pdf)



### Debunking the absentee / vote by mail fraud and abuse argument

One of the most puzzling, frustrating things we run into at the **National Vote at Home Coalition** is the accusation that making absentee ballots far more accessible, much less allowing "Vote at Home" elections in which every voter receives a mailed-out ballot will result in material fraud or abuse. So, let's set the record straight, with data rather than fear.

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[21/](#) "Oregon has mailed out more than 100 million ballots since 2000, with about a dozen cases of proven fraud; a 0.000012 percent rate" (@drvox for @voxdotcom):

<https://www.vox.com/policy-and-politics/2018/5/23/17383400/vote-by-mail-home-california-alaska-nebraska>

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## The simple voting reform that works wherever it's tried

Recent experiments in Alaska and Nebraska show voting by mail dramatically boosts turnout.

By David Roberts | @drvrx | david@vox.com | Updated May 24, 2018, 11:07am EDT

f t SHARE



You've got mail. | Shutterstock

• • • •



**Ellen L Weintraub**  
@EllenLWeintraub

[22/](#) President disbanded his own commission charged with investigating voter fraud in 2018, without producing any systemic evidence of fraud. @miwine & @tacketdc for @NYTimes:

<https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html>

### ***Trump Disbands Commission on Voter Fraud***



President Trump in 2016 with Kris Kobach, the Kansas secretary of state who went on to become a member of the White House voter fraud commission. Carolyn Kaster/Associated Press



*Facts About Voting by Mail*  
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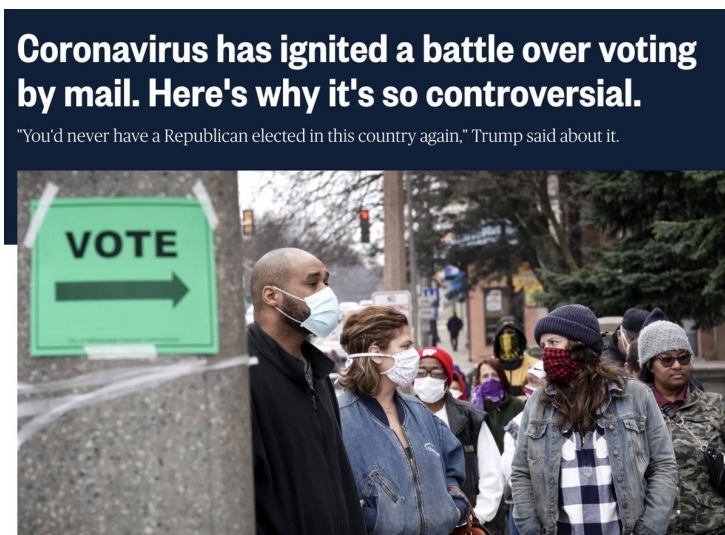
• • • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

**23/** "Deeply conservative Utah has moved almost entirely to vote-by-mail in recent years" (@aseitzwald & @sahilkapur for @NBCNews):

<https://www.nbcnews.com/politics/2020-election/coronavirus-has-ignited-battle-over-voting-my-mail-here-s-n1178531>



• • • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

**24/** President requests vote-by-mail ballot for Florida Republican presidential primary (@mannahorse for @pbpost):

<https://www.palmbeachpost.com/news/20200311/president-trump-requests-absentee-ballot>

#### President Trump requests absentee ballot

**MOST POPULAR**

- 1 Hot spots in Lake Worth, Belle Glade threaten progress against coronavirus  
May 23 at 12:21 PM
- 2 A teen, a teacher, a gun: 2000 school shooting staggered Palm Beach County  
May 21 at 7:15 AM
- 3 Florida teacher who sparked inclusion training continued posting homophobic memes  
May 21 at 3:16 PM
- 4 Florida's previously suppressed COVID-19 Medical Examiner data made public  
May 22 at 1:03 PM

BUY PHOTO    HIDE CAPTION  
President Donald Trump at Palm Beach International Airport Friday. [ALLEN EYESTONE/palmbeachpost.com]



*Facts About Voting by Mail*  
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*May 27, 2020*

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

25/ Fox News Anchor Chris Wallace: "I've done some deep dive into it, there really is no record of massive fraud or even serious fraud from mail-in voting." "It's being carried out in Republican states, it's being carried out in Democratic states."

<https://twitter.com/kylegriffin1/status/1264896497268768768>



**Kyle Griffin** ✓  
@kylegriffin1

Fox's Chris Wallace: "I've done some deep dive into it, there really is no record of massive fraud or even serious fraud from mail-in voting."

"It's being carried out in Republican states, it's being carried out in Democratic states."



Chris Wallace Demolishes Trump's Mail-In Voting Lies: 'No History of Fraud'  
Fox News anchor Chris Wallace debunked President Donald Trump's false claims that fraud is rampant in mail-in voting, noting on Friday morning that...  
[news.yahoo.com](https://news.yahoo.com)

8:30 AM · May 25, 2020 · TweetDeck

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

26/ From more than a billion votes cast between 2000 and 2012, there were only 491 cases of absentee-voter fraud (@news21 Voting Rights Project):

<https://votingrights.news21.com/article/about/>

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*May 27, 2020*



• • • • •



**Ellen L Weintraub**  
 @EllenLWeintraub

[27/](#) Parties are virtually equal in percentages of who votes by mail (@cstewartiii for @caltech):

<https://electionupdates.caltech.edu/2020/03/20/some-demographics-on-voting-by-mail/>

## Election Updates

New research, analysis and commentary on election reform, voting technology, and election administration.

HOME ABOUT

### Some Demographics on Voting by Mail

By Charles Stewart III, MIT

With the sudden surge of interest in mail balloting because of the COVID-19 emergency, there's also been some interest in questions about who tends to use mail ballots now and who would like to use mail ballots. Here is provide some basic demographics related to the question. Because there's so much going on right now, I won't provide much commentary, allowing the numbers to "speak for themselves," which is rarely a good idea.

• • • • •



**Ellen L Weintraub**  
 @EllenLWeintraub

[28/](#) @NBCNews White House Correspondent @GeoffRBennet:

<https://twitter.com/GeoffRBennett/status/1265620820208029702>

*Facts About Voting by Mail*  
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*May 27, 2020*



**Geoff Bennett** ✓  
 @GeoffRBennett

NEW: Trump insists there's "NO WAY" an election with increased mail-in voting will be legitimate. But both Democratic and Republican officials overseeing that process say he's dead wrong.



Trump rants about fraud. But here's the secret to keeping voting by mail secure. Election officials in both parties have put in place safeguards. And they work.  
 nbcnews.com

8:28 AM · May 27, 2020 · Twitter for iPhone

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**Ellen L. Weintraub**  
 @EllenLWeintraub

[29/](#) Author and @UCL Professor @brianklaas:

<https://twitter.com/brianklaas/status/1265260640039587842>



**Brian Klaas** ✓  
 @brianklaas

I study election rigging. I co-authored a book called How to Rig an Election. These tweets are lies. The purpose of these tweets is to lay the groundwork to reject or dispute election results if he loses.



**Donald J. Trump** ✓ @realDonaldTrump · May 26

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone.....

[Show this thread](#)

8:36 AM · May 26, 2020 · Twitter for iPhone

• • • • •

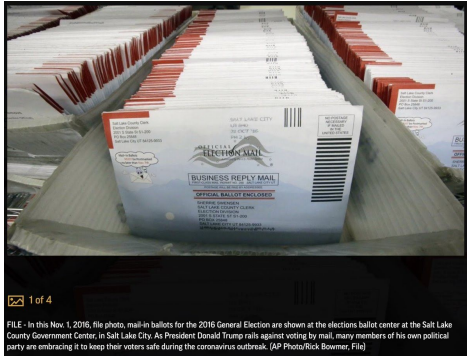
*Facts About Voting by Mail*  
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**Ellen L. Weintraub**  
@EllenLWeintraub

**30/** GOP state officials warming to vote-by-mail (NE, OH, WV, IA); Iowa Republican SoS Paul Pate: “sowing doubt about the integrity of the process is as dangerous as vote fraud” (@NickRiccardi for @AP):

<https://apnews.com/4cf54df2ab65b4f7d0ee6d4aed774428>



• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

**31/** Mistake, not fraud: “Fraud by individual voters is almost nonexistent; mistakes in a confusing system are the real issue” (@Rutgers\_Camden Professor Lorraine C. Minnite):

[https://scholars.org/sites/scholars/files/ssn\\_key\\_findings\\_minnite\\_on\\_the\\_myth\\_of\\_voter\\_fraud.pdf](https://scholars.org/sites/scholars/files/ssn_key_findings_minnite_on_the_myth_of_voter_fraud.pdf)

## THE MISLEADING MYTH OF VOTER FRAUD IN AMERICAN ELECTIONS

*by Lorraine C. Minnite, Rutgers University-Camden*

Are fraudulent voters undermining U.S. elections? The simple answer is no. Rather, the threat comes from the *myth* of voter fraud used to justify rules that restrict full and equal voting rights.

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

**32/** @BrennanCenter's “The Truth About Voter Fraud” found that even among the small number of reported incidents of ‘fraud,’ most turn out to be traceable to other causes:

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*May 27, 2020*

[https://www.brennancenter.org/sites/default/files/analysis/Briefing\\_Memo\\_Debunking\\_Voter\\_Fraud\\_Myth.pdf](https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Debunking_Voter_Fraud_Myth.pdf)

BRENNAN CENTER  
FOR JUSTICE  
TWENTY YEARS

at New York University School of Law

**Debunking the Voter Fraud Myth**

Sensationalist claims have circulated this election season about the extent of voter fraud, with some politicians [going so far](#) as to [tell voters](#) to fear that this November's election will be "[rigged](#)." Because electoral integrity is one of the elements necessary to making America the greatest democracy in the world, claims like this garner media attention, and frighten and concern voters. But putting rhetoric aside to look at the facts makes clear that fraud by voters at the polls is vanishingly rare, and does not happen on a scale even close to that necessary to "rig" an election.

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[33/](#) @NaveedAJamali for @Newsweek:

<https://twitter.com/NaveedAJamali/status/1265426007692992512>



**Naveed Jamali** ✓  
@NaveedAJamali

Washington State has successfully used mail-in voting since 2005. In 2018 the only 142 cases of improper voting out of 3.1 million ballots, or just 0.004% of all votes, were designated "improper voting." So, Washington State shows mail-in ballots work.



**Donald J. Trump** ✓ @realDonaldTrump · May 26

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone.....

[Show this thread](#)

7:34 PM · May 26, 2020 from Seattle, WA · Twitter for iPhone

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub


[34/](#) @MarshallCohen for @CNN:

<https://twitter.com/MarshallCohen/status/1265428400656744454>

*Facts About Voting by Mail*  
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This tweet is false too — and should be labeled as such, like the earlier tweet about mail-in voting. (Because he says mail-in ballots “lead to massive corruption and fraud,” which is a debunked lie.)

 **Donald J. Trump** @realDonaldTrump · May 26  
.@Twitter is now interfering in the 2020 Presidential Election. They are saying my statement on Mail-In Ballots, which will lead to massive corruption and fraud, is incorrect, based on fact-checking by Fake News CNN and the Amazon Washington Post....  
[Show this thread](#)

7:43 PM · May 26, 2020 · [Twitter for iPhone](#)

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[35/](#) @kirstenfrankly (Chief of Staff, UT GOP Lt. Gov. @SpencerJCox): “there is very little evidence of voter fraud within our mail-in system” (@NBCNews):

<https://www.nbcnews.com/politics/donald-trump/trump-pushes-false-claims-about-mail-vote-fraud-here-are-n1180566>

## Trump pushes false claims about mail-in vote fraud. Here are the facts.

The pandemic has ignited a partisan battle around the voting method, with Democrats increasingly embracing the idea as way to ensure a safe election.

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

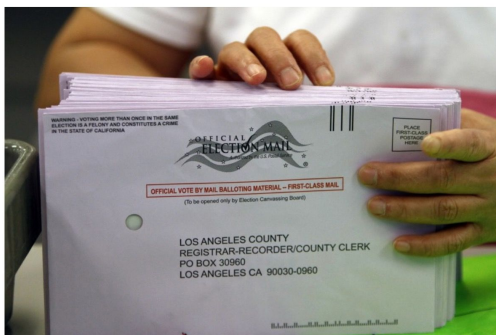
[36/](#) GOP leaders have long urged their supporters to vote by mail. GOP governors are sounding the call for easy access to mail-in ballots (@DoyleMcManus for @LATimes):

<https://www.latimes.com/politics/story/2020-05-24/column-trump-doesnt-like-mail-in-voting-but-its-not-his-call>



*Facts About Voting by Mail*  
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*May 27, 2020*

Column: Trump doesn't like mail-in voting, but it's not his call



President Trump has threatened to block federal funding from states that send mail-in ballots to every voter. (Allen J. Schaben / Los Angeles Times)

...



**Ellen L Weintraub**  
@EllenLWeintraub

[37/](#) @MSNBC quoting Michigan @LtGovGilchrist:

<https://twitter.com/MSNBC/status/1265213623611383808>



**MSNBC** ✓  
@MSNBC

"More people are killed by deer in a year than have ever been proven to commit voter fraud at a given time," Michigan Lt. Gov. Gilchrist says about claims that mail-in voting will lead to fraud.



Michigan Lt. Gov.: Trump is 'dead wrong' on mail-in voting  
As President Trump continues to make baseless claims about mail-in voting leading to fraud, Michigan Lt. Governor Garlin Gilchrist notes that 'more ...'  
[msnbc.com](https://www.msnbc.com)

5:30 AM · May 26, 2020 · [SocialFlow](#)

...

*Facts About Voting by Mail*  
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May 27, 2020



**Ellen L. Weintraub**  
@EllenLWeintraub

[38/](#) @realDonaldTrump votes by mail (@Yamiche for @PBS):

<https://twitter.com/Yamiche/status/1263198640044195840>



**Yamiche Alcindor** ✓  
@Yamiche

So today, Pres Trump, who regularly votes by mail, threatened to hold up federal funds for two battleground states--Michigan & Nevada-- bc they are trying to make it easier & safer to vote during the coronavirus pandemic.

Then, @PressSec referred Qs about it to Trump campaign.

4:03 PM · May 20, 2020 · Twitter Web App

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[39/](#) @Heritage election fraud database reports just 143 convictions involving fraudulent use of absentee ballots over the past 20 years (approx. 0.00006% of total votes cast):

<https://www.heritage.org/voterfraud>



• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[40/](#) @SenatorRomney says 90% of Utah Republicans vote by mail (@BudrykZack for @thehill):

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<https://thehill.com/homenews/senate/498916-romney-counters-trump-90-percent-of-very-republican-utah-votes-by-mail>



## Romney counters Trump: 90 percent of 'very Republican' Utah votes by mail

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[41/](#) "There is no evidence that mail balloting results in rampant voter fraud" (@AmberMcReynolds & @cstewartiii for @thehill):

<https://thehill.com/opinion/campaign/494189-lets-put-the-vote-by-mail-fraud-myth-to-rest>



## Let's put the vote-by-mail 'fraud' myth to rest

BY AMBER MCREYNOLDS AND CHARLES STEWART III, OPINION CONTRIBUTORS —  
04/28/20 07:00 AM EDT  
THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

739 COMMENTS

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[42/](#) Former Republican campaign strategist compares president to "the boy who cried wolf" in spreading panic and undermining faith in the electoral process, to the detriment of his own base. (@grace\_panetta for @businessinsider):

<https://www.businessinsider.com/trumps-crusade-against-vote-by-mail-could-backfire-on-republicans-2020-5>

*Facts About Voting by Mail*  
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### **Why Trump's crusade against voting by mail could backfire on Republicans and hurt the president's own voters**

Grace Panetta May 21, 2020, 1:54 PM



President Donald Trump. Associated Press

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[43/](#) @KimWyman12, Republican @secstatewa, supports vote by mail. (@lerner for @NYTimes):

<https://www.nytimes.com/2020/04/15/us/politics/washington-where-everyone-votes-by-mail.html?smid=tw-share>

ON POLITICS WITH LISA LERER

## **Washington: Where Everyone Votes by Mail**

We spoke to the secretary of state to get her take on voting by mail and whether she thinks the balloting option could be implemented across the country.

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[44/](#) Research on vote by mail shows neutral partisan effects. (May Wong, @SIEPR):

<https://siepr.stanford.edu/news/new-research-voting-mail-shows-neutral-partisan-effects>

*Facts About Voting by Mail*  
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*May 27, 2020*

## New research on voting by mail shows neutral partisan effects



By May Wong

APR 16 2020

The coronavirus has disrupted state primaries and forced the prospect of major reforms for the 2020 election. Election officials across the nation are mulling expansions or transitions to mail-in voting while Congress is fielding calls for a nationwide vote-by-mail program.

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[45/](#) "Trump casts doubt on mail voting. His campaign promotes it." (@NickRiccardi for @AP):

<https://apnews.com/6416231367cfa0bd213796149f3cee26>

## Trump casts doubt on mail voting. His campaign promotes it.

By NICHOLAS RICCARDI May 12, 2020

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[46/](#) In 2017, the risk of mail-in vote fraud was 0.0004% to 0.0009% (@HopeYen1 & Calvin Woodward for @AP Fact Check, quoting @BrennanCenter):

<https://apnews.com/e45b0fd875cd2bf8be2b92330f37300f>

## AP FACT CHECK: Trump misfires on watchdogs, mail-in voting

By HOPE YEN and CALVIN WOODWARD April 12, 2020

• • • •

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*May 27, 2020*



**Ellen L. Weintraub**  
@EllenLWeintraub

[47/](#) Former Assistant Secretary of Defense under President Reagan, @LarryKorb: "U.S. troops routinely vote by mail. Why can't the rest of America do the same?" (@MilitaryTimes):

<https://www.militarytimes.com/opinion/commentary/2020/05/18/us-troops-routinely-vote-by-mail-why-cant-the-rest-of-america-do-the-same/>



**Commentary**

**US troops routinely vote by mail. Why can't the rest of America do the same?**

Lawrence J. Korb

May 18

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**Ellen L. Weintraub**  
@EllenLWeintraub

[48/](#) @LeeDrutman for @FiveThirtyEight: "There is no evidence that vote by mail gives one party an advantage.":

<https://fivethirtyeight.com/features/there-is-no-evidence-that-voting-by-mail-gives-one-party-an-advantage/>



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*Facts About Voting by Mail*  
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*May 27, 2020*



**Ellen L. Weintraub**  
@EllenLWeintraub

[49/](#) Justin Levitt (@\_justinlevitt\_): "Each act of voter fraud in connection with a federal election risks 5 years in prison....a single extra vote is simply not worth the price." (@brennancenter @NYULaw):

<https://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>

BRENNAN  
CENTER  
FOR JUSTICE

THE TRUTH  
ABOUT  
VOTER FRAUD  
Justin Levitt

• • • •



**Ellen L. Weintraub**  
@EllenLWeintraub

[50/](#) Oh, and I (@EllenLWeintraub) have also spoken on the topic: "Democrats have studied this, Republicans have studied this, and no one can find any evidence of rampant voter fraud either historically or particularly in the 2016 elections."

<https://thehill.com/homenews/administration/457942-fec-chairwoman-to-trump-there-is-no-evidence-of-rampant-voter-fraud>



## FEC chairwoman to Trump: 'There is no evidence of rampant voter fraud'

BY REBECCA KLAR - 08/19/19 11:44 AM EDT

2,019 COMMENTS

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*Facts About Voting by Mail*  
*Commissioner Ellen L. Weintraub*  
*May 27, 2020*



**Ellen L Weintraub**  
@EllenLWeintraub

**51/** To sum up:

Many Americans will be voting by mail this year. In the 2016 general election, 139 million people voted overall; even more could do so this year.

• • • •



**Ellen L Weintraub**  
@EllenLWeintraub

**52/** With that many voters, could a few instances of illegal voting activity crop up? Perhaps. But there is no basis to claim that it will be anything other than exceedingly rare.

• • • •



**Ellen L Weintraub**  
@EllenLWeintraub

**53/** Facts matter. Data matters. When Prof. @\_justinlevitt\_ researched in-person voter fraud between 2000 and 2014, he found just 31 credible allegations – just allegations! – out of more than a \*billion\* ballots cast.

<https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/>

Economic Policy

## A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast

• • • •



**Ellen L Weintraub**  
@EllenLWeintraub

**54/** Research by U. of Wisconsin & Stanford political scientists “indicate[d] that the proportion of the population reporting voter impersonation is indistinguishable from that reporting abduction by extraterrestrials.”

<https://www.liebertpub.com/doi/abs/10.1089/elj.2013.0231>

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*Commissioner Ellen L. Weintraub*  
*May 27, 2020*

Election Law Journal: Rules, Politics, and Policy, Vol. 13, No. 4 | Articles

## Alien Abduction and Voter Impersonation in the 2012 U.S. General Election: Evidence from a Survey List Experiment

John S. Ahlquist, Kenneth R. Mayer, and Simon Jackman

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**55/** The numbers are similarly tiny for voting by mail. Even the Heritage Foundation's voter-fraud database contains only 13 instances of absentee voter fraud across the 5 states that had all-mail balloting going into this year: CO, HI, OR, UT, & WA.

<https://www.nytimes.com/2020/05/18/opinion/2020-election-results-delay.html>



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**56/** Voting by mail will not make the 2020 election substantially fraudulent or massively corrupt.

There is no basis for that claim.

None. Zero. Zip. Nada.

*Facts About Voting by Mail*  
*Commissioner Ellen L. Weintraub*  
*May 27, 2020*

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[57/](#) Specifically:

There is no basis for the claim that the election will be substantially fraudulent or massively corrupt due to mailbox robbery.

There is no basis for the claim that the election will be substantially fraudulent or massively corrupt due to ballot forgery.

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[58/](#) There is no basis for the claim that the election will be substantially fraudulent or massively corrupt due to illegal ballot printing.

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[59/](#) There is no basis for the claim that the election will be substantially fraudulent or massively corrupt due to fraudulently signed ballots.

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[60/](#) There is no basis for the claim that the election will be substantially fraudulent or massively corrupt due to voters being told for whom to vote.

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[61/](#) There is no basis for the claim that the election will be substantially fraudulent or massively corrupt due to a cheating free-for-all.

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*Facts About Voting by Mail*  
*Commissioner Ellen L. Weintraub*  
*May 27, 2020*



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[62/](#) There is no basis for the claim that the election will be substantially fraudulent or massively corrupt due to a forgery free-for-all.

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[63/](#) There is no basis for the claim that the election will be substantially fraudulent or massively corrupt due to a ballot theft free-for-all.

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[64/](#) Claims that voter fraud is widespread are, as shown above, “dead wrong,” “crying ‘wolf,’” “false,” “a debunked lie.”

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[65/](#) Such falsehoods are not mere words. These falsehoods may well undermine the American people's faith in our democracy. And the *\*real\** fraud would be if U.S. citizens were deterred from voting and our government reflected the consent of fewer of the governed.

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[66/](#) True leaders speak truth. Especially in an election season plagued by pandemic, economic uncertainty, and death, the American people deserve nothing less than the truth from our leaders.

# EXHIBIT 4



A  
The Atlantic

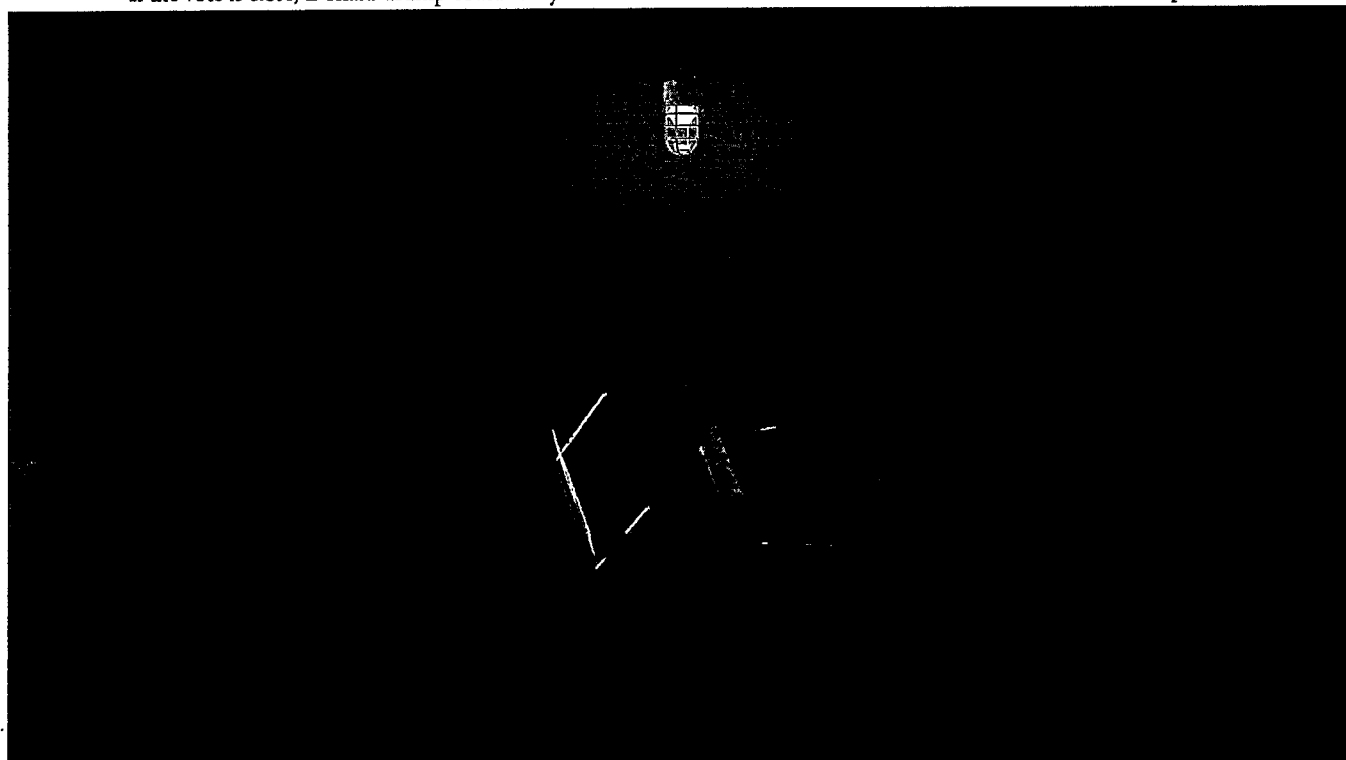
Watch live: The pandemic has exacerbated the racial divides in health in America. What should be done to address these issues?

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# The Atlantic

## The Election That Could Break America

If the vote is close, Donald Trump could easily throw the election into chaos and subvert the result. Who will stop him?



Story by Barton Gellman

SPECIAL PREVIEW: NOVEMBER 2020 ISSUE | POLITICS

Illustrations by Guillem Casasús / Renderings by Borja Alegre

THERE IS A COHORT of close observers of our presidential elections, scholars and lawyers and political strategists, who find themselves in the uneasy position of intelligence analysts in the months before 9/11. As November 3 approaches, their screens are blinking red, alight with warnings that the political system does not know how to absorb. They see the obvious signs that we all see, but they also know subtle things that most of us do not. Something dangerous has hove into view, and the nation is lurching into its path.

 TheAtlantic - The Election That Could Break America...

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The danger is not merely that the 2020 election will bring discord. Those who fear something worse take turbulence and controversy for granted. The coronavirus pandemic, a reckless incumbent, a deluge of mail-in ballots, a vandalized Postal Service, a resurgent effort to suppress votes, and a trainload of lawsuits are bearing down on the nation's creaky electoral machinery.

Something has to give, and many things will, when the time comes for casting, canvassing, and certifying the ballots. Anything is possible, including a landslide that leaves no doubt on Election Night. But even if one side takes a commanding early lead, tabulation and litigation of the “overtime count”—millions of mail-in and provisional ballots—could keep the outcome unsettled for days or weeks.

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AtlanticLIVE: The Election That Could Break America

Barton Gellman spoke with Adrienne LaFrance about what could happen if the vote is close, live on September 24.

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If we are lucky, this fraught and dysfunctional election cycle will reach a conventional stopping point in time to meet crucial deadlines in December and January. The contest will be decided with sufficient authority that the losing candidate will be forced to yield. Collectively we will have made our choice—a messy one, no doubt, but clear enough to arm the president-elect with a mandate to govern.

As a nation, we have never failed to clear that bar. But in this election year of plague and recession and catastrophized politics, the mechanisms of decision are at meaningful risk of breaking down. Close students of election law and procedure are warning that conditions are ripe for a constitutional crisis that would leave the nation without an authoritative result. We have no fail-safe against that calamity. Thus the blinking red lights.

“We could well see a protracted postelection struggle in the courts and the streets if the results are close,” says Richard L. Hasen, a professor at the UC Irvine School of Law and the author of a recent book called *Election Meltdown*. “The kind of election meltdown we could see would be much worse than 2000’s *Bush v. Gore* case.”

A lot of people, including Joe Biden, the Democratic Party nominee, have misconceived the nature of the threat. They frame it as a concern, unthinkable for presidents past, that Trump might refuse to vacate the Oval Office if he loses. They generally conclude, as Biden has, that in that event the proper authorities “will escort him from the White House with great dispatch.”

The worst case, however, is not that Trump rejects the election outcome. The worst case is that he uses his power to prevent a decisive outcome against him. If Trump sheds all restraint, and if his Republican allies play the parts he assigns them, he could obstruct the emergence of a legally unambiguous victory for Biden in the Electoral College and then in Congress. He could prevent the formation of consensus about whether there is any outcome at all. He could seize on that uncertainty to hold on to power.

Trump's state and national legal teams are already laying the groundwork for postelection maneuvers that would circumvent the results of the vote count in battleground states. Ambiguities in the Constitution and logic bombs in the Electoral Count Act make it possible to extend the dispute all the way to Inauguration Day, which would bring the nation to a precipice. The Twentieth Amendment is crystal clear that the president's term in office "shall end" at noon on January 20, but two men could show up to be sworn in. One of them would arrive with all the tools and power of the presidency already in hand.

"We are not prepared for this at all," Julian Zelizer, a Princeton professor of history and public affairs, told me. "We talk about it, some worry about it, and we imagine what it would be. But few people have actual answers to what happens if the machinery of democracy is used to prevent a legitimate resolution to the election."

*Let us not hedge about one thing. Donald Trump may win or lose, but he will never concede.*

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Nineteen summers ago, when counterterrorism analysts warned of a coming attack by al-Qaeda, they could only guess at a date. This year, if election analysts are right, we know when the trouble is likely to come. Call it the Interregnum: the interval from Election Day to the next president's swearing-in. It is a temporal no-man's-land between the presidency of Donald Trump and an uncertain successor—a second term for Trump or a first for Biden. The transfer of power we usually take for granted has several intermediate steps, and they are fragile.

The Interregnum comprises 79 days, carefully bounded by law. Among them are "the first Monday after the second Wednesday in December," this year December 14, when the electors meet in all 50 states and the District of Columbia to cast their ballots for president; "the 3d day of January," when the newly elected Congress is seated; and "the sixth day of January," when the House and Senate meet jointly for a formal count of the electoral vote. In most modern elections these have been pro forma milestones, irrelevant to the outcome. This year, they may not be.

"Our Constitution does not secure the peaceful transition of power, but rather presupposes it," the legal scholar Lawrence Douglas wrote in a recent book titled simply Will He Go? The Interregnum we are about to enter will be accompanied by what Douglas, who teaches at Amherst, calls a "perfect storm" of adverse conditions. We cannot turn away from that storm. On November 3 we sail toward its center mass. If we emerge without trauma, it will not be an unbreakable ship that has saved us.

**L**ET US NOT HEDGE about one thing. Donald Trump may win or lose, but he will never concede. Not under any circumstance. Not during the Interregnum and not afterward. If compelled in the end to vacate his office, Trump will insist from exile, as long as he draws breath, that the contest was rigged.

Trump's invincible commitment to this stance will be the most important fact about the coming Interregnum. It will deform the proceedings from beginning to end. We have not experienced anything like it before.

Maybe you hesitate. Is it a *fact* that if Trump loses, he will reject defeat, come what may? Do we *know* that? Technically, you feel obliged to point out, the proposition is framed in the future conditional, and prophecy is no man's gift, and so forth. With all due respect, that is pettifoggery. We know this man. We cannot afford to pretend.

Trump's behavior and declared intent leave no room to suppose that he will accept the public's verdict if the vote is going against him. He lies prodigiously—to manipulate events, to secure advantage, to dodge accountability, and to ward off injury to his pride. An election produces the perfect distillate of all those motives.

Pathology may exert the strongest influence on Trump's choices during the Interregnum. Well-supported arguments, some of them in this magazine, have made the case that Trump fits the diagnostic criteria for psychopathy and narcissism. Either disorder, by its medical definition, would render him all but incapable of accepting defeat.

Conventional commentary has trouble facing this issue squarely. Journalists and opinion makers feel obliged to add disclaimers when asking "what if" Trump loses and refuses to concede. "The scenarios all seem far-fetched," Politico wrote, quoting a source who compared them to science fiction. Former U.S. Attorney Barbara McQuade, writing in The Atlantic in February, could not bring herself to treat the risk as real: "That a president would defy the results of an election has long been unthinkable; it is now, if not an actual possibility, at the very least something Trump's supporters joke about."

But Trump's supporters aren't the only people who think extraconstitutional thoughts aloud. Trump has been asked directly, during both this campaign and the last, whether he will respect the election results. He left his options brazenly open. "What I'm saying is that I will tell you at the time. I'll keep you in suspense. Okay?" he told moderator Chris Wallace in the third presidential debate of 2016. Wallace took another crack at him in an interview for Fox News this past July. "I have to see," Trump said. "Look, you—I have to see. No, I'm not going to just say yes. I'm not going to say no."

How will he decide when the time comes? Trump has answered that, actually. At a rally in Delaware, Ohio, in the closing days of the 2016 campaign, he began his performance with a signal of breaking news. "Ladies and gentlemen, I want to make a major announcement today. I would like to promise and pledge to all of my voters and supporters, and to all the people of the United States, that I will totally accept the results of this great and historic presidential election." He paused, then made three sharp thrusts of his forefinger to punctuate the next words: "If ... I ... win!" Only then did he stretch his lips in a simulacrum of a smile.

The question is not strictly hypothetical. Trump's respect for the ballot box has already been tested. In 2016, with the presidency in hand, having won the Electoral College, Trump baldly rejected the certified tallies that showed he had lost the popular vote by a margin of 2,868,692. He claimed, baselessly but not coincidentally, that at least 3 million undocumented immigrants had cast fraudulent votes for Hillary Clinton.

All of which is to say that there is no version of the Interregnum in which Trump congratulates Biden on his victory. He has told us so. "The only way they can take this election away from us is if this is a rigged election," Trump said at the Republican National Convention on August 24. Unless he wins a bona fide victory in the Electoral College, Trump's refusal to concede—his mere denial of defeat—will have cascading effects.



THE RITUAL that marks an election's end took its contemporary form in 1896. On the Thursday evening after polls closed that year, unwelcome news reached the Democratic presidential nominee, William Jennings Bryan. A dispatch from Senator James K. Jones, the chair of the Democratic National Committee, informed him that "sufficient was known to make my defeat certain," Bryan recalled in a memoir.

He composed a telegram to his Republican opponent, William McKinley. "Senator Jones has just informed me that the returns indicate your election, and I hasten to extend my congratulations," Bryan wrote. "We have submitted the issue to the American people and their will is law."

After Bryan, concession became a civic duty, performed by telegram or telephone call and then by public speech. Al Smith brought the concession speech to radio in 1928, and it migrated to television soon afterward.

Like other rituals, concessions developed a liturgy. The defeated candidate comes out first. He thanks supporters, declares that their cause will live on, and acknowledges that the other side has prevailed. The victor begins his own remarks by honoring the surrender.



Concessions employ a form of words that linguists call performative speech. The words do not describe or announce an act; the words themselves are the act. "The concession speech, then, is not merely a report of an election result or an admission of defeat," the political scientist Paul E. Corcoran has written. "It is a constitutive enactment of the new president's authority."

In actual war, not the political kind, concession is optional. The winning side may take by force what the losing side refuses to surrender. If the weaker party will not sue for peace, its ramparts may be breached, its headquarters razed, and its leaders taken captive or put to death. There are places in the world where political combat still ends that way, but not here. The loser's concession is therefore hard to replace.

Consider the 2000 election, which may appear at first glance to demonstrate otherwise. Al Gore conceded to George W. Bush on Election Night, then withdrew his concession and fought a recount battle in Florida until the Supreme Court shut it down. It is commonly said that the Court's 5-4 ruling decided the contest, but that's not quite right.

The Court handed down its ruling in *Bush v. Gore* on December 12, six days before the Electoral College would convene and weeks before Congress would certify the results. Even with canvassing halted in Florida, Gore had the constitutional means to fight on, and some advisers urged him to do so. If he had brought the dispute to Congress, he would have held high ground as the Senate's presiding officer.

Not until Gore addressed the nation on December 13, the day after the Court's decision, did the contest truly end. Speaking as a man with unexpended ammunition, Gore laid down his arms. "I accept the finality of this outcome, which will be ratified next Monday in the Electoral College," he said. "And tonight, for the sake of our unity as a people and the strength of our democracy, I offer my concession."

We have no precedent or procedure to end this election if Biden seems to carry the Electoral College but Trump refuses to concede. We will have to invent one.

**T**RUMP IS, by some measures, a weak authoritarian. He has the mouth but not the muscle to work his will with assurance. Trump denounced Special Counsel Robert Mueller but couldn't fire him. He accused his foes of treason but couldn't jail them. He has bent the bureaucracy and flouted the law but not broken free altogether of their restraints.

A proper despot would not risk the inconvenience of losing an election. He would fix his victory in advance, avoiding the need to overturn an incorrect outcome. Trump cannot do that.

But he's not powerless to skew the proceedings—first on Election Day and then during the Interregnum. He could disrupt the vote count where it's going badly, and if that does not work, try to bypass it altogether. On Election Day, Trump and his allies can begin by suppressing the Biden vote.

There is no truth to be found in dancing around this point, either: Trump does not want Black people to vote. (He said as much in 2017—on Martin Luther King Day, no less—to a voting-rights group co-founded by King, according to a recording leaked to *Politico*.) He does not want young people or poor people to vote. He believes, with reason, that he is less likely to win reelection if turnout is high at the polls. This is not a "both sides" phenomenon. In present-day politics, we have one party that consistently seeks advantage in depriving the other party's adherents of the right to vote.

Just under a year ago, Justin Clark gave a closed-door talk in Wisconsin to a select audience of Republican lawyers. He thought he was speaking privately, but someone had brought a recording device. He had a lot to say about Election Day operations, or "EDO."

At the time, Clark was a senior lieutenant with Trump's reelection campaign; in July, he was promoted to deputy campaign manager. "Wisconsin's the state that is going to tip this one way or the other ... So it makes EDO really, really, really important," he said. He put the mission bluntly: "Traditionally it's always been Republicans suppressing votes ... [Democrats'] voters are all in one part of the state, so let's start playing offense a little bit. And that's what you're going to see in 2020. That's what's going to be markedly different. It's going to be a much bigger program, a much more aggressive program, a much better-funded program, and we're going to need all the help we can get." (Clark later claimed that his remarks had been misconstrued, but his explanation made no sense in context.)

Of all the favorable signs for Trump's Election Day operations, Clark explained, "first and foremost is the consent decree's gone." He was referring to a court order forbidding Republican operatives from using any of a long list of voter-purging and

intimidation techniques. The expiration of that order was a “huge, huge, huge, huge deal,” Clark said.

His audience of lawyers knew what he meant. The 2020 presidential election will be the first in 40 years to take place without a federal judge requiring the Republican National Committee to seek approval in advance for any “ballot security” operations at the polls. In 2018, a federal judge allowed the consent decree to expire, ruling that the plaintiffs had no proof of recent violations by Republicans. The consent decree, by this logic, was not needed, because it worked.

The order had its origins in the New Jersey gubernatorial election of 1981. According to the district court’s opinion in *Democratic National Committee v. Republican National Committee*, the RNC allegedly tried to intimidate voters by hiring off-duty law-enforcement officers as members of a “National Ballot Security Task Force,” some of them armed and carrying two-way radios. According to the plaintiffs, they stopped and questioned voters in minority neighborhoods, blocked voters from entering the polls, forcibly restrained poll workers, challenged people’s eligibility to vote, warned of criminal charges for casting an illegal ballot, and generally did their best to frighten voters away from the polls. The power of these methods relied on well-founded fears among people of color about contact with police.

This year, with a judge no longer watching, the Republicans are recruiting 50,000 volunteers in 15 contested states to monitor polling places and challenge voters they deem suspicious-looking. Trump called in to Fox News on August 20 to tell Sean Hannity, “We’re going to have sheriffs and we’re going to have law enforcement and we’re going to have, hopefully, U.S. attorneys” to keep close watch on the polls. For the first time in decades, according to Clark, Republicans are free to combat voter fraud in “places that are run by Democrats.”

*Trump’s crusade against voting by mail  
is the strategy of a man who expects to be outvoted and means to hobble the count.*

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Voter fraud is a fictitious threat to the outcome of elections, a pretext that Republicans use to thwart or discard the ballots of likely opponents. An authoritative report by the Brennan Center for Justice, a nonpartisan think tank, calculated the rate of voter fraud in three elections at between 0.0003 percent and 0.0025 percent. Another investigation, from Justin Levitt at Loyola Law School, turned up 31 credible allegations of voter impersonation out of more than 1 billion votes cast in the United States from 2000 to 2014. Judges in voting-rights cases have made comparable findings of fact.

Nonetheless, Republicans and their allies have litigated scores of cases in the name of preventing fraud in this year’s election. State by state, they have sought—with some success—to purge voter rolls, tighten rules on provisional votes, uphold voter-identification requirements, ban the use of ballot drop boxes, reduce eligibility to vote by mail, discard mail-in ballots with technical flaws, and outlaw the counting of ballots that are postmarked by Election Day but arrive afterward. The intent and effect is to throw away votes in large numbers.

These legal maneuvers are drawn from an old Republican playbook. What’s different during this cycle, aside from the ferocity of the efforts, is the focus on voting by mail. The president has mounted a relentless assault on postal balloting at the exact moment when the coronavirus pandemic is driving tens of millions of voters to embrace it.

**T**HIS YEAR’S PRESIDENTIAL ELECTION will see voting by mail on a scale unlike any before—some states are anticipating a tenfold increase in postal balloting. A 50-state survey by *The Washington Post* found that 198 million eligible voters, or at least 84 percent, will have the option to vote by mail.

Trump has denounced mail-in voting often and urgently, airing fantastical nightmares. One day he tweeted, “MAIL-IN VOTING WILL LEAD TO MASSIVE FRAUD AND ABUSE. IT WILL ALSO LEAD TO THE END OF OUR GREAT REPUBLICAN PARTY. WE CAN NEVER LET THIS TRAGEDY BEFALL OUR NATION.” Another day he pointed to an imaginary—and easily debunked—scenario of forgery from abroad: “RIGGED 2020 ELECTION: MILLIONS OF MAIL-IN BALLOTS WILL BE PRINTED BY FOREIGN COUNTRIES, AND OTHERS. IT WILL BE THE SCANDAL OF OUR TIMES!”

By late summer Trump was declaiming against mail-in voting an average of nearly four times a day—a pace he had reserved in the past for existential dangers such as impeachment and the Mueller investigation: “Very dangerous for our country.” “A catastrophe.” “The greatest rigged election in history.”



Summer also brought reports that the U.S. Postal Service, the government's most popular agency, was besieged from within by Louis DeJoy, Trump's new postmaster general and a major Republican donor. Service cuts, upper-management restructuring, and chaotic operational changes were producing long delays. At one sorting facility, the *Los Angeles Times* reported, "workers fell so far behind processing packages that by early August, gnats and rodents were swarming around containers of rotted fruit and meat, and baby chicks were dead inside their boxes."

In the name of efficiency, the Postal Service began decommissioning 10 percent of its mail-sorting machines. Then came word that the service would no longer treat ballots as first-class mail unless some states nearly tripled the postage they paid, from 20 to 55 cents an envelope. DeJoy denied any intent to slow down voting by mail, and the Postal Service withdrew the plan under fire from critics.

If there were doubts about where Trump stood on these changes, he resolved them at an August 12 news conference. Democrats were negotiating for a \$25 billion increase in postal funding and an additional \$3.6 billion in election assistance to states.

"They don't have the money to do the universal mail-in voting. So therefore, they can't do it, I guess," Trump said. "It's very simple. How are they going to do it if they don't have the money to do it?"

What are we to make of all this?

In part, Trump's hostility to voting by mail is a reflection of his belief that more voting is bad for him in general. Democrats, he said on Fox & Friends at the end of March, want "levels of voting that, if you ever agreed to it, you'd never have a Republican elected in this country again."

Some Republicans see Trump's vendetta as self-defeating. "It to me appears entirely irrational," Jeff Timmer, a former executive director of the Michigan Republican Party, told me. "The Trump campaign and RNC and by fiat their state party organizations are engaging in suppressing their own voter turnout," including Republican seniors who have voted by mail for years.

But Trump's crusade against voting by mail is a strategically sound expression of his plan for the Interregnum. The president is not actually trying to prevent mail-in balloting altogether, which he has no means to do. He is discrediting the practice and starving it of resources, signaling his supporters to vote in person, and preparing the ground for post-Election Night plans to contest the results. It is the strategy of a man who expects to be outvoted and means to hobble the count.

Voting by mail does not favor either party "during normal times," according to a team of researchers at Stanford, but that phrase does a lot of work. Their findings, which were published in June, did not take into account a president whose words

alone could produce a partisan skew. Trump's systematic predictions of fraud appear to have had a powerful effect on Republican voting intentions. In Georgia, for example, a Monmouth University poll in late July found that 60 percent of Democrats but only 28 percent of Republicans were likely to vote by mail. In the battleground states of Pennsylvania and North Carolina, hundreds of thousands more Democrats than Republicans have requested mail-in ballots.

Trump, in other words, has created a proxy to distinguish friend from foe. Republican lawyers around the country will find this useful when litigating the count. Playing by the numbers, they can treat ballots cast by mail as hostile, just as they do ballots cast in person by urban and college-town voters. Those are the ballots they will contest.

**T**HE BATTLE SPACE of the Interregnum, if trends hold true, will be shaped by a phenomenon known as the "blue shift." Edward Foley, an Ohio State professor of constitutional law and a specialist in election law, pioneered research on the blue shift. He found a previously unremarked-upon pattern in the overtime count—the canvass after Election Night that tallies late-reporting precincts, unprocessed absentee votes, and provisional ballots cast by voters whose eligibility needed to be confirmed. For most of American history, the overtime count produced no predictably partisan effect. In any given election year, some states shifted red in the canvass after Election Day and some shifted blue, but the shifts were seldom large enough to matter.

Two things began to change about 20 years ago. The overtime count got bigger, and it trended more and more blue. In an updated paper this year, Foley and his co-author, Charles Stewart III of MIT, said they could not fully explain why the shift favors Democrats. (Some factors: Urban returns take longer to count, and most provisional ballots are cast by young, low-income, or mobile voters, who lean blue.) During overtime in 2012, Barack Obama strengthened his winning margins in swing states like Florida (with a net increase of 27,281 votes), Michigan (60,695), Ohio (65,459), and Pennsylvania (26,146). Obama would have won the presidency anyway, but shifts of that magnitude could have changed the outcomes of many a closer contest. Hillary Clinton picked up tens of thousands of overtime votes in 2016, but not enough to save her.

The blue shift has yet to decide a presidential election, but it upended the Arizona Senate race in 2018. Republican Martha McSally seemed to have victory in her grasp with a lead of 15,403 votes the day after Election Day. Canvassing in the days that followed swept the Democrat, Kyrsten Sinema, into the Senate with "a gigantic overtime gain of 71,303 votes," Foley wrote.

It was Florida, however, that seized Trump's attention that year. On Election Night, Republicans were leading in tight contests for governor and U.S. senator. As the blue shift took effect, Ron DeSantis watched his lead shrink by 18,416 votes in the governor's race. Rick Scott's Senate margin fell by 20,231. By early morning on November 12, six days after Election Day, Trump had seen enough. "The Florida Election should be called in favor of Rick Scott and Ron DeSantis in that large numbers of new ballots showed up out of nowhere, and many ballots are missing or forged," he tweeted, baselessly. "An honest vote count is no longer possible—ballots massively infected. Must go with Election Night!"

Trump was panicked enough by the blue shift in somebody else's election to fabricate allegations of fraud. In this election, when his own name is on the ballot, the blue shift could be the largest ever observed. Mail-in votes require more time to count even in a normal year, and this year there will be tens of millions more of them than in any election before. Many states forbid the processing of early-arriving mail ballots before Election Day; some allow late-arriving ballots to be counted.

*"Any scenario that you come up with will not be as weird as the reality of it," a Trump legal adviser says.*

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Trump's instinct as a spectator in 2018—to stop the count—looks more like strategy this year. "There are results that come in Election Night," a legal adviser to Trump's national campaign, who would not agree to be quoted by name, told me. "There's an expectation in the country that there will be winners and losers called. If the Election Night results get changed because of the ballots counted after Election Day, you have the basic ingredients for a shitstorm."

There is no "if" about it, I said. The count is bound to change. "Yeah," the adviser agreed, and canvassing will produce more votes for Biden than for Trump. Democrats will insist on dragging out the canvass for as long as it takes to count every vote. The resulting conflict, the adviser said, will be on their heads.

"They are asking for it," he said. "They're trying to maximize their electoral turnout, and they think there are no downsides to that." He added, "There will be a count on Election Night, that count will shift over time, and the results when the final count

is given will be challenged as being inaccurate, fraudulent—pick your word.”

The worst case for an orderly count is also considered by some election modelers the likeliest: that Trump will jump ahead on Election Night, based on in-person returns, but his lead will slowly give way to a Biden victory as mail-in votes are tabulated. Josh Mendelsohn, the CEO of the Democratic data-modeling firm Hawkfish, calls this scenario “the red mirage.” The turbulence of that interval, fed by street protests, social media, and Trump’s desperate struggles to lock in his lead, can only be imagined. “Any scenario that you come up with will not be as weird as the reality of it,” the Trump legal adviser said.

**E**LECTION LAWYERS SPEAK of a “margin of litigation” in close races. The tighter the count in early reports, and the more votes remaining to count, the greater the incentive to fight in court. If there were such a thing as an Election Administrator’s Prayer, as some of them say, only half in jest, it would go, “Lord, let there be a landslide.”

Could a landslide spare us conflict in the Interregnum? In theory, yes. But the odds are not promising.

It is hard to imagine a Trump lead so immense on Election Night that it places him out of Biden’s reach. Unless the swing states manage to count most of their mail-in ballots that night, which will be all but impossible for some of them, the expectation of a blue shift will keep Biden fighting on. A really big Biden lead on Election Night, on the other hand, could leave Trump without plausible hope of catching up. If this happens, we may see it first in Florida. But this scenario is awfully optimistic for Biden, considering the GOP advantage among in-person voters, and in any case Trump will not concede defeat. This early in the Interregnum, he will have practical options to keep the contest alive.

Both parties are bracing for a torrent of emergency motions in state and federal courts. They have already been skirmishing from courthouse to courthouse all year in more than 40 states, and Election Day will begin a culminating phase of legal combat.

Mail-in ballots will have plenty of flaws for the Trump lawyers to seize upon. Voting by mail is more complicated than voting in person, and technical errors are commonplace at each step. If voters supply a new address, or if they write a different version of their name (for example, by shortening Benjamin to Ben), or if their signature has changed over the years, or if they print their name on the signature line, or if they fail to seal the ballot inside an inner security envelope, their votes may not count. With in-person voting, a poll worker in the precinct can resolve small errors like these, for instance by directing a voter to the correct signature line, but people voting by mail may have no opportunity to address them.

During the primaries this spring, Republican lawyers did dry runs for the November vote at county election offices around the country. An internal memo prepared by an attorney named J. Matthew Wolfe for the Pennsylvania Republican Party in June reported on one such exercise. Wolfe, along with another Republican lawyer and a member of the Trump campaign, watched closely but did not intervene as election commissioners in Philadelphia canvassed mail-in and provisional votes. Wolfe cataloged imperfections, taking note of objections that his party could have raised.

There were missing signatures and partial signatures and signatures placed in the wrong spot. There were names on the inner security envelopes, which are supposed to be unmarked, and ballots without security envelopes at all. Some envelopes arrived “without a postmark or with an illegible postmark,” Wolfe wrote. (Watch for postmarks to become the hanging chads of 2020.) Some voters wrote their birthdate where a signature date belonged, and others put down “an impossible date, like a date after the primary election.”

Some of the commissioners’ decisions “were clear violations of the direction in and language of the election code,” Wolfe wrote. He recommended that “someone connected with the party review each application and each mail ballot envelope” in November. That is exactly the plan.

Legal teams on both sides are planning for simultaneous litigation, on the scale of Florida during the 2000 election, in multiple battleground states. “My money would be on Texas, Georgia, and Florida” to be trouble spots, Myrna Pérez, the director of voting rights and elections at the Brennan Center, told me.

There are endless happenstances in any election for lawyers to exploit. In Montgomery County, Pennsylvania, not far from Wolfe’s Philadelphia experiment, the county Republican committee gathered surveillance-style photographs of purportedly suspicious goings-on at a ballot drop box during the primary. In one sequence, a county employee is described as placing “unsecured ballots” in the trunk of a car. In another, a security guard is said to be “disconnecting the generator which supplies

power to the security cameras.” The photos could mean anything—it’s impossible to tell, out of context—but they are exactly the kind of ersatz evidence that is sure to go viral in the early days of the Interregnum.

The electoral combat will not confine itself to the courtroom. Local election adjudicators can expect to be named and doxed and pilloried as agents of George Soros or antifa. Aggressive crowds of self-proclaimed ballot guardians will be spoiling to reenact the “Brooks Brothers riot” of the *Bush v. Gore* Florida recount, when demonstrators paid by the Bush campaign staged a violent protest that physically prevented canvassers from completing a recount in Miami-Dade County.

Things like this have already happened, albeit on a smaller scale than we can expect in November. With Trump we must also ask: What might a ruthless incumbent do that has never been tried before?

Suppose that caravans of Trump supporters, adorned in Second Amendment accessories, converge on big-city polling places on Election Day. They have come, they say, to investigate reports on social media of voter fraud. Counterprotesters arrive, fistfights break out, shots are fired, and voters flee or cannot reach the polls.

Then suppose the president declares an emergency. Federal personnel in battle dress, staged nearby in advance, move in to restore law and order and secure the balloting. Amid ongoing clashes, they stay to monitor the canvass. They close the streets that lead to the polls. They take custody of uncounted ballots in order to preserve evidence of fraud.

“The president can’t cancel the election, but what if he says, ‘We’re in an emergency, and we’re shutting down this area for a period of time because of the violence taking place?’” says Norm Ornstein of the American Enterprise Institute. If you are in Trump’s camp and heedless of boundaries, he said, “what I would expect is you’re not going to do one or two of these things—you’ll do as many as you can.”

There are variations of the nightmare. The venues of intervention could be post offices. The predicate could be a putative intelligence report on forged ballots sent from China.

This is speculation, of course. But none of these scenarios is far removed from things the president has already done or threatened to do. Trump dispatched the National Guard to Washington, D.C., and sent Department of Homeland Security forces to Portland, Oregon, and Seattle during summertime protests for racial justice, on the slender pretext of protecting federal buildings. He said he might invoke the Insurrection Act of 1807 and “deploy the United States military” to “Democrat-run cities” in order to protect “life and property.” The federal government has little basis to intercede during elections, which are largely governed by state law and administered by about 10,500 local jurisdictions, but no one familiar with Attorney General Bill Barr’s view of presidential power should doubt that he can find authority for Trump.

With every day that passes after November 3, the president and his allies can hammer home the message that the legitimate tabulation is over and the Democrats are refusing to honor the results. Trump has been flogging this horse already for months. In July he tweeted, “Must know Election results on the night of the Election, not days, months, or even years later!”

Does it matter what Trump says? It is tempting to liken a vote count to the score at a sporting event. The losing coach can bellyache all he likes, but when the umpire makes the call, the game is over. An important thing to know about the Interregnum is that there is no umpire—no singular authority who can decide the contest and lay it to rest. There is a series of lesser officials, each confined in jurisdiction and tangled in opaque rules.

Trump’s strategy for this phase of the Interregnum will be a play for time as much as a concerted attempt to squelch the count and disqualify Biden votes. The courts may eventually weigh in. But by then, the forum of decision may already have moved elsewhere.

THE INTERREGNUM ALLOTS 35 days for the count and its attendant lawsuits to be resolved. On the 36th day, December 8, an important deadline arrives.

At this stage, the actual tabulation of the vote becomes less salient to the outcome. That sounds as though it can't be right, but it is: The combatants, especially Trump, will now shift their attention to the appointment of presidential electors.

December 8 is known as the "safe harbor" deadline for appointing the 538 men and women who make up the Electoral College. The electors do not meet until six days later, December 14, but each state must appoint them by the safe-harbor date to guarantee that Congress will accept their credentials. The controlling statute says that if "any controversy or contest" remains after that, then Congress will decide which electors, if any, may cast the state's ballots for president.

We are accustomed to choosing electors by popular vote, but nothing in the Constitution says it has to be that way. Article II provides that each state shall appoint electors "in such Manner as the Legislature thereof may direct." Since the late 19th century, every state has ceded the decision to its voters. Even so, the Supreme Court affirmed in *Bush v. Gore* that a state "can take back the power to appoint electors." How and when a state might do so has not been tested for well over a century.

Trump may test this. According to sources in the Republican Party at the state and national levels, the Trump campaign is discussing contingency plans to bypass election results and appoint loyal electors in battleground states where Republicans hold the legislative majority. With a justification based on claims of rampant fraud, Trump would ask state legislators to set aside the popular vote and exercise their power to choose a slate of electors directly. The longer Trump succeeds in keeping the vote count in doubt, the more pressure legislators will feel to act before the safe-harbor deadline expires.

To a modern democratic sensibility, discarding the popular vote for partisan gain looks uncomfortably like a coup, whatever license may be found for it in law. Would Republicans find that position disturbing enough to resist? Would they cede the election before resorting to such a ploy? Trump's base would exact a high price for that betrayal, and by this point party officials would be invested in a narrative of fraud.

The Trump-campaign legal adviser I spoke with told me the push to appoint electors would be framed in terms of protecting the people's will. Once committed to the position that the overtime count has been rigged, the adviser said, state lawmakers will want to judge for themselves what the voters intended.

"The state legislatures will say, 'All right, we've been given this constitutional power. We don't think the results of our own state are accurate, so here's our slate of electors that we think properly reflect the results of our state,'" the adviser said. Democrats, he added, have exposed themselves to this stratagem by creating the conditions for a lengthy overtime.

"If you have this notion," the adviser said, "that ballots can come in for I don't know how many days—in some states a week, 10 days—then that onslaught of ballots just gets pushed back and pushed back and pushed back. So pick your poison. Is it worse to have electors named by legislators or to have votes received by Election Day?"

When *The Atlantic* asked the Trump campaign about plans to circumvent the vote and appoint loyal electors, and about other strategies discussed in the article, the deputy national press secretary did not directly address the questions. "It's outrageous that President Trump and his team are being villainized for upholding the rule of law and transparently fighting for a free and fair election," Thea McDonald said in an email. "The mainstream media are giving the Democrats a free pass for their attempts to completely uproot the system and throw our election into chaos." Trump is fighting for a trustworthy election, she wrote, "and any argument otherwise is a conspiracy theory intended to muddy the waters."

In Pennsylvania, three Republican leaders told me they had already discussed the direct appointment of electors among themselves, and one said he had discussed it with Trump's national campaign.

"I've mentioned it to them, and I hope they're thinking about it too," Lawrence Tabas, the Pennsylvania Republican Party's chairman, told me. "I just don't think this is the right time for me to be discussing those strategies and approaches, but [direct appointment of electors] is one of the options. It is one of the available legal options set forth in the Constitution." He added that everyone's preference is to get a swift and accurate count. "If the process, though, is flawed, and has significant flaws, our public may lose faith and confidence" in the election's integrity.

Jake Corman, the state's Senate majority leader, preferred to change the subject, emphasizing that he hoped a clean vote count would produce a final tally on Election Night. "The longer it goes on, the more opinions and the more theories and the more conspiracies [are] created," he told me. If controversy persists as the safe-harbor date nears, he allowed, the legislature will have no choice but to appoint electors. "We don't want to go down that road, but we understand where the law takes us, and we'll follow the law."

Republicans control both legislative chambers in the six most closely contested battleground states. Of those, Arizona and Florida have Republican governors, too. In Michigan, North Carolina, Pennsylvania, and Wisconsin, the governors are Democrats.

Foley, the Ohio State election scholar, has mapped the ripple effects if Republican legislators were to appoint Trump electors in defiance of the vote in states like Pennsylvania and Michigan. The Democratic governors would respond by certifying the official count, a routine exercise of their authority, and they would argue that legislators could not lawfully choose different electors after the vote had taken place. Their "certificates of ascertainment," dispatched to the National Archives, would say that their states had appointed electors committed to Biden. Each competing set of electors would have the imprimatur of one branch of state government.

In Arizona, Secretary of State Katie Hobbs, who oversees elections, is a Democrat. She could assert her own power to certify the voting results and forward a slate of Biden electors. Even in Florida, which has unified Republican rule, electors pledged to Biden could meet and certify their own votes in hope of triggering a "controversy or contest" that would leave their state's outcome to Congress. Much the same thing almost happened during the Florida recount battle of 2000. Republican Governor Jeb Bush certified electors for his brother, George W. Bush, on November 26 of that year, while litigation of the recount was still under way. Gore's chief lawyer, Ronald Klain, responded by booking a room in the old Florida capitol building for Democratic electors to cast rival ballots for Gore. Only Gore's concession, five days before the Electoral College vote, mooted that plan.

In any of these scenarios, the Electoral College would convene on December 14 without a consensus on who had legitimate claims to cast the deciding votes.



Rival slates of electors could hold mirror-image meetings in Harrisburg, Lansing, Tallahassee, or Phoenix, casting the same electoral votes on opposite sides. Each slate would transmit its ballots, as the Constitution provides, “to the seat of the government of the United States, directed to the President of the Senate.” The next move would belong to Vice President Mike Pence.

This would be a genuine constitutional crisis, the first but not the last of the Interregnum. “Then we get thrown into a world where anything could happen,” Norm Ornstein says.

**T**WO MEN ARE CLAIMING the presidency. The next occasion to settle the matter is more than three weeks away.

January 6 comes just after the new Congress is sworn in. Control of the Senate will be crucial to the presidency now.

Pence, as president of the Senate, would hold in his hands two conflicting electoral certificates from each of several swing states. The Twelfth Amendment says only this about what happens next: “The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted.”

Note the passive voice. Who does the counting? Which certificates are counted?

The Trump team would take the position that the constitutional language leaves those questions to the vice president. This means that Pence has the unilateral power to announce his own reelection, and a second term for Trump. Democrats and legal scholars would denounce the self-dealing and point out that Congress filled the gaps in the Twelfth Amendment with the Electoral Count Act, which provides instructions for how to resolve this kind of dispute. The trouble with the instructions is that they are widely considered, in Foley’s words, to be “convoluted and impenetrable,” “confusing and ugly,” and “one of the strangest pieces of statutory language ever enacted by Congress.”

If the Interregnum is a contest in search of an umpire, it now has 535 of them, and a rule book that no one is sure how to read. The presiding officer is one of the players on the field.

Foley has produced a 25,000-word study in the *Loyola University Chicago Law Journal* that maps out the paths the ensuing fight could take if only *one* state’s electoral votes are in play.

If Democrats win back the Senate and hold the House, then all roads laid out in the Electoral Count Act lead eventually to a Biden presidency. The reverse applies if Republicans hold the Senate and unexpectedly win back the House. But if Congress remains split, there are conditions in which no decisive outcome is possible—no result that has clear force of law. Each party could cite a plausible reading of the rules in which its candidate has won. There is no tie-breaking vote.

How can it be that Congress slips into unbreakable deadlock? The law is a labyrinth in these parts, too intricate to map in a magazine article, but I can sketch one path.

Suppose Pennsylvania alone sends rival slates of electors, and their 20 votes will decide the presidency.

One reading of the Electoral Count Act says that Congress must recognize the electors certified by the governor, who is a Democrat, unless the House and Senate agree otherwise. The House will not agree otherwise, and so Biden wins Pennsylvania and the White House. But Pence pounds his gavel and rules against this reading of the law, instead favoring another, which holds that Congress must discard both contested slates of electors. The garbled statute can plausibly be read either way.

With Pennsylvania’s electors disqualified, 518 electoral votes remain. If Biden holds a narrow lead among them, he again claims the presidency, because he has “the greatest number of votes,” as the Twelfth Amendment prescribes. But Republicans point out that the same amendment requires “a majority of the whole number of electors.” The whole number of electors, Pence rules, is 538, and Biden is short of the required 270.

On this argument, no one has attained the presidency, and the decision is thrown to the House, with one vote per state. If the current partisan balance holds, 26 out of 50 votes will be for Trump.

Before Pence can move on from Pennsylvania to Rhode Island, which is next on the alphabetical list as Congress counts the vote, House Speaker Nancy Pelosi expels all senators from the floor of her chamber. Now Pence is prevented from completing the count “in the presence of” the House, as the Constitution requires. Pelosi announces plans to stall indefinitely. If the count is still incomplete on Inauguration Day, the speaker herself will become acting president.

Pelosi prepares to be sworn in on January 20 unless Pence reverses his ruling and accepts that Biden won. Pence does not budge. He reconvenes the Senate in another venue, with House Republicans squeezing in, and purports to complete the count, making Trump the president-elect. Three people now have supportable claims to the Oval Office.

There are other paths in the labyrinth. Many lead to dead ends.

This is the next constitutional crisis, graver than the one three weeks before, because the law and the Constitution provide for no other authority to consult. The Supreme Court may yet intervene, but it may also shy away from another traumatizing encounter with a fundamentally political question.

Sixty-four days have passed since the election. Stalemate reigns. Two weeks remain until Inauguration Day.

**F**OLEY, WHO FORESAW THIS IMPASSE, knows of no solution. He cannot tell you how we avoid it under current law, or how it ends. It is not so much, at this point, a question of law. It is a question of power. Trump has possession of the White House. How far will he push boundaries to keep it, and who will push back? It is the same question the president has posed since the day he took office.

I hoped to gain some insight from a series of exercises conducted this summer by a group of former elected officials, academics, political strategists, and lawyers. In four days of simulations, the Transition Integrity Project modeled the election and its aftermath in an effort to find pivot points where things could fall apart.

They found plenty. Some of the scenarios included dueling slates of electors of the kind I have described. In one version it was the Democratic governor of Michigan who first resorted to appointing electors, after Trump ordered the National Guard to halt the vote count and a Trump-friendly guardsman destroyed mail-in ballots. John Podesta, Hillary Clinton's campaign chair in 2016, led a Biden team in another scenario that was prepared to follow Trump to the edge of civil war, encouraging three blue states to threaten secession. Norm-breaking begat norm-breaking. (Clinton herself, in an August interview for Showtime's *The Circus*, caught the same spirit. "Joe Biden should not concede under any circumstances," she said.)

*If you are a voter, think about voting in person. If you are at low risk for COVID-19, volunteer to work at the polls.*

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A great deal has been written about the proceedings, including a firsthand account from my colleague David Frum. But the coverage had a puzzling gap. None of the stories fully explained how the contest ended. I wanted to know who took the oath of office.

I called Rosa Brooks, a Georgetown professor who co-founded the project. Unnervingly, she had no answers for me. She did not know how the story turned out. In half of the simulations, the participants did not make it as far as Inauguration Day.

"We got to points in the scenarios where there was a constitutional impasse, no clear means of resolution in sight, street-level violence," she said. "I think in one of them we had Trump invoking the Insurrection Act and we had troops in the streets ... Five hours had gone by and we sort of said, 'Okay, we're done.'" She added: "Once things were clearly off the rails, there was no particular benefit to seeing exactly how far off they would go."

"Our goal in doing this was to try to identify intervention moments, to identify moments where we could then look back and say, 'What would have changed this? What would have kept it from getting this bad?'" Brooks said. The project didn't make much progress there. No lessons were learned about how to restrain a lawless president once a conflict was under way, no alternative moves devised to stave off disaster. "I suppose you could say we were in terra incognita: no one could predict what would happen anymore," Brooks told me in a follow-up email.

**T**HE POLITICAL SYSTEM may no longer be strong enough to preserve its integrity. It's a mistake to take for granted that election boards and state legislatures and Congress are capable of drawing lines that ensure a legitimate vote and an orderly transfer of power. We may have to find a way to draw those lines ourselves.

There are reforms to consider some other day, when an election is not upon us. Small ones, like clearing up the murky parts of the Electoral Count Act. Big ones, like doing away with the Electoral College. Obvious ones, like appropriating money to help cash-starved election authorities upgrade their operations in order to speed up and secure the count on Election Day.

Right now, the best we can do is an ad hoc defense of democracy. Begin by rejecting the temptation to think that this election will carry on as elections usually do. Something far out of the norm is likely to happen. Probably more than one thing. Expecting otherwise will dull our reflexes. It will lull us into spurious hope that Trump is tractable to forces that constrain normal incumbents.

If you are a voter, think about voting in person after all. More than half a million postal votes were rejected in this year's primaries, even without Trump trying to suppress them. If you are at relatively low risk for COVID-19, volunteer to work at the polls. If you know people who are open to reason, spread word that it is normal for the results to keep changing after Election Night. If you manage news coverage, anticipate extraconstitutional measures, and position reporters and crews to respond to them. If you are an election administrator, plan for contingencies you never had to imagine before. If you are a mayor, consider how to deploy your police to ward off interlopers with bad intent. If you are a law-enforcement officer, protect the freedom to vote. If you are a legislator, choose not to participate in chicanery. If you are a judge on the bench in a battleground state, refresh your acquaintance with election case law. If you have a place in the military chain of command, remember your duty to turn aside unlawful orders. If you are a civil servant, know that your country needs you more than ever to do the right thing when you're asked to do otherwise.

Take agency. An election cannot be stolen unless the American people, at some level, acquiesce. One thing Brooks has been thinking about since her exercise came to an end is the power of peaceful protest on a grand scale. "We had players on both sides attempting to mobilize their supporters to turn out in large numbers, and we didn't really have a good mechanism for deciding, did that make a difference? What kind of difference did that make?" she said. "It left some with some big questions about what if you had Orange Revolution-style mass protest sustained over weeks. What effects would that have?"

**O**NLY ONCE, IN 1877, has the Interregnum brought the country to the brink of true collapse. We will find no model in that episode for us now.

Four states sent rival slates of electors to Congress in the 1876 presidential race between Democrat Samuel Tilden and Republican Rutherford B. Hayes. When a special tribunal blessed the electors for Hayes, Democrats began parliamentary maneuvers to obstruct the electoral count in Congress. Their plan was to run out the clock all the way to Inauguration Day, when the Republican incumbent, Ulysses S. Grant, would have to step down.

Not until two days before Grant's term expired did Tilden give in. His concession was based on a repugnant deal for the withdrawal of federal troops from the South, where they were protecting the rights of emancipated Black people. But that was not Tilden's only inducement.

The threat of military force was in the air. Grant let it be known that he was prepared to declare martial law in New York, where rumor had it that Tilden planned to be sworn in, and to back the inauguration of Hayes with uniformed troops.

That is an unsettling precedent for 2021. If our political institutions fail to produce a legitimate president, and if Trump maintains the stalemate into the new year, the chaos candidate and the commander in chief will be one and the same.

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**BARTON GELLMAN** is a staff writer at The Atlantic and author of Dark Mirror: Edward Snowden and the American Surveillance State and Angler: The Cheney Vice Presidency.

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# EXHIBIT 5



SEP. 30, 2020, AT 6:28 PM

# Trump's Chances Are Dwindling. That Could Make Him Dangerous.

By Nate SilverFiled under 2020 Election

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President Trump's quest to win a second term is not in good shape. He entered Tuesday night's debate with roughly a 7- or 8-point deficit in national polls, putting him further behind at this stage of the race than any other candidate since Bob Dole in 1996.<sup>1</sup>

If we look at potential tipping-point states, the race is a bit closer, but not *that* much closer. After a couple of strong polls for Joe Biden earlier this week in Pennsylvania — the state that's currently most likely to decide the election — Trump now trails there by 5 to 6 points. He's down by about 7 points in Michigan and Wisconsin, meanwhile. Those states, along with Minnesota, Maine and New Hampshire — where Biden has also polled strongly lately — suggest that Biden is winning back some of the Obama-Trump white

working-class voters who flocked to Trump four years ago. Indeed, Biden is as close to winning South Carolina or Alaska as Trump is to winning Michigan and Wisconsin, based on recent polls of those states.

At a time when Trump desperately needed a boost, the debate probably didn't help him either — it may have hurt him. Every scientific poll we've seen had Trump losing the debate, some by narrow margins and some by wide ones.

That includes the poll FiveThirtyEight conducted with Ipsos, which surveyed the same group of voters before and after the debate. While the poll didn't show a massive swing — most voters stuck to their initial preferences — more voters did rate Biden's performance favorably, and Biden gained ground relative to Trump based on the number of voters who said they were certain to vote for him, roughly tantamount to a 3-point swing toward Biden in head-to-head polls.

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Now, I'm not predicting this will happen, but if Biden's national lead were to expand to 9 or 10 points, which is consistent with the sorts of polling bounces we've seen in the past




for candidates who were perceived to win debates — especially challengers debating an incumbent for the first time — Trump’s situation could become quite desperate.

To be clear, none of this means that Trump’s chances are kaput. As of this writing, our forecast still gives him around a 21 percent chance of winning the Electoral College. That’s not great, but it’s a lot better than zero.

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But it’s possible Trump’s chances may decline further after post-debate polling begins to roll into our forecast. Furthermore, the mere passage of time helps Biden in our model, because every day that Trump doesn’t gain ground is a day when his fate becomes slightly more sealed. (Lots of people have already voted!) Case in point: In an election held *today* — Trump has no more time to make up ground — his chances would be 9 percent, not 21 percent, according to our forecast.

Then again, there are some possibilities that our model doesn’t account for, and they have become more pertinent after Trump has repeatedly refused to commit to a peaceful transfer of power and declined to commit to respecting the election results. As we wrote when launching the forecast:

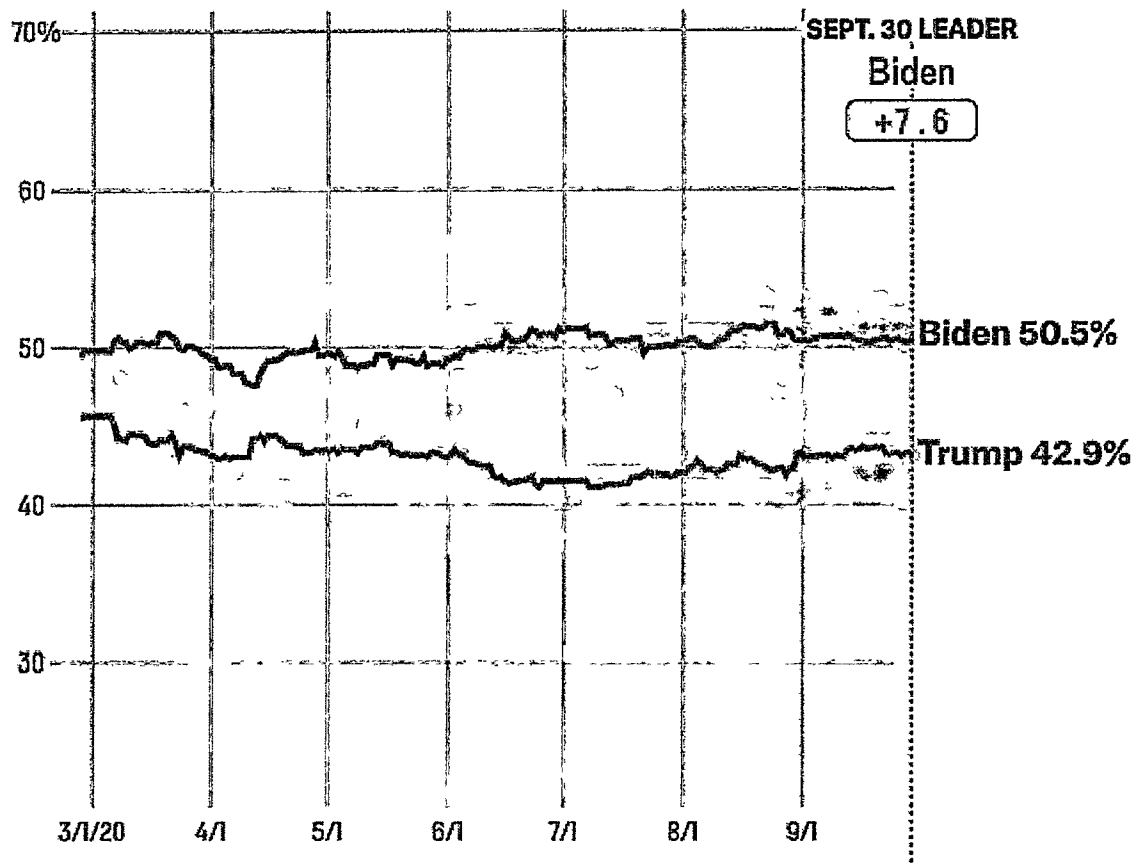
We assume that there are reasonable efforts to allow eligible citizens to vote and to count all legal ballots, and that electors are awarded to the popular-vote winner in each state. The model also does not account for the possibility of extraconstitutional shenanigans by Trump or by anyone else, such as trying to prevent mail ballots from being counted.

Let's back up for a second. This is FiveThirtyEight's fourth presidential election campaign. And in the previous three, there was at least *some* question about who was ahead in the stretch run of the race. John McCain, for instance, briefly pulled ahead of Barack Obama following the 2008 Republican convention, and Obama didn't really solidify his lead until early October. In 2012, national polls were very tight between Obama and Mitt Romney following the first presidential debate, and remained fairly tight thereafter (although Obama always maintained an Electoral College edge). And people forget how close the 2016 race was for stretches of the campaign; it was *not* such a huge upset. In fact, Hillary Clinton led by only 1.4 points in our national polling average heading into the first debate that year.

But there isn't any of that ambiguity this time. Since we launched our general election polling averages on June 18, Biden has never led by less than 6.6 points nationally. Literally only one national poll — a Rasmussen Reports poll that put Trump ahead by less than a full percentage point — has shown Trump leading by any margin during that period. It's been an exceptionally stable race.

## Who's ahead in the national polls?

An updating average of 2020 presidential general election polls,  
accounting for each poll's quality, sample size and recency



But, amazingly, that hasn't really shaken people's confidence in Trump's ability to win. In our own poll with Ipsos, we found respondents thought Biden and Trump had roughly equally likely chances of winning. And maybe that boils down to three perpetual sources of anxiety I hear in conversation with liberal friends or liberal readers:

1. Trump could win the Electoral College despite losing the popular vote by a wide margin.
2. There could be a large polling error in Trump's favor.
3. Trump could somehow steal the election.

All three are legitimate sources of concern for Biden backers. The first two are relatively easy to quantify, however. Indeed, the whole purpose of a model like FiveThirtyEight's presidential forecast is to answer questions like those. The third one, however, is harder to get a handle on, so let's talk about No. 1 and 2 first..

# The Electoral College could still help Trump, but it only goes so far

The possibility of an Electoral College, popular vote split remains a point in Trump’s favor. In fact, there’s an 11 percent chance that Trump wins the Electoral College but not the popular vote in our forecast (but less than a 1 percent chance the other way around). At the same time, Biden’s strength in the Upper Midwest relative to Clinton’s — at least, if polls are correct there — potentially mitigates this disadvantage to some extent. The table below shows Biden’s probability of winning the Electoral College given various popular vote margins, according to our forecast as of Wednesday afternoon. And as you can see, Biden is only truly *safe* to win the Electoral College once he has a popular vote margin of 5 points or more! But, he’s a fairly heavy favorite with a 3- to 5-point margin, and has roughly break-even odds with a 2- to 3-point margin.

## Biden’s favored, if he wins the popular vote by +2 to +3 points

Chances of Biden winning the Electoral College under different popular vote scenarios, according to the FiveThirtyEight presidential forecast, as of Sept. 30

POPULAR VOTE MARGIN SCENARIOS	BIDEN'S CHANCES OF WINNING THE ELECTORAL COLLEGE
Biden +6 to Biden +7	>99%
Biden +5 to Biden +6	98
Biden +4 to Biden +5	93
Biden +3 to Biden +4	77
Biden +2 to Biden +3	54
Biden +1 to Biden +2	29
TIE to Biden +1	11
Trump +1 to TIE	3
Trump +2 to Trump +1	<1

So, for practical purposes, you can take Biden’s lead in national polls and subtract 2 or 2.5 points from it to infer his margin in tipping-point states. In other words, if he’s ahead by around 7.5 points in national polls, that’s more like the equivalent of a 5-point lead in the Electoral College. That’s still a reasonably large advantage; empirically, it’s not that easy to overcome a 5-point deficit at this stage of the race.

## A big polling error could help Trump ... or Biden

One of the misconceptions I hear about FiveThirtyEight's forecast is that "it assumes that polls are right." Actually, in some sense the whole purpose of the forecast is to estimate the chance that the polls are wrong. In 2016, the polls *did* show Clinton ahead, but between tight margins in tipping-point states and the large number of undecided voters, there was a fairly high probability — around 30 percent, according to our forecast — that Trump was going to win anyway.

So while a polling error is possible — indeed, our forecast assumes there's likely additional error this year because of an uptick in mail voting — it would still take a bigger error than in 2016 for Trump to win.

Assume that current polls hold until Election Day, and subtract 3 points from Biden's margin in every state (roughly the average error in swing state polls in 2016) ... Biden still wins Pennsylvania, Michigan and Wisconsin fairly comfortably, and therefore, the Electoral College; he'd also be a slight favorite in Arizona. And as our friends at the Upshot have calculated, even if you had a polling error of the exact same magnitude in the exact same states as in 2016, Biden would still win, albeit narrowly.

Of course, nothing intrinsically rules out a larger polling error. We had one in 1948 — when Dewey didn't defeat Truman, after all — and in 1980, when Ronald Reagan won in an epic landslide instead of the narrow margin that polls predicted.

But there's no guarantee such an error would favor Trump. Historically, the direction of polling bias has not been predictable from cycle to cycle; the same polls that underestimated Trump in 2016 tended to underestimate Obama and Democrats in 2012, for instance. If anything, to the extent there are polling errors, they sometimes come in the opposite direction of what the conventional wisdom expects.

I want to spend more time on this topic in the coming days, so I won't go on at too much length here. But for now, know that a 7-point Biden lead on Election Day could, indeed, turn into a 2-point Biden popular vote win where Trump narrowly wins the Electoral College.

As I wrote earlier in the piece, our forecast gives Trump about a 9 percent chance of winning an election held *today* despite his current deficit in polls — not bad when you're 7 points down! But it's about equally likely that a 7-point Biden lead could translate into a 12-point Biden win, in which he'd not only carry states like Georgia and Texas, but would also have a shot in South Carolina, Alaska and Montana.

## Trump's comments on respecting the election outcome are deeply worrisome, but it's hard to estimate his chances of overturning the result

Hoo, boy. At some point I'm going to have to write a column about this too, I suppose. As I said at the outset, our forecast assumes that the election is free and fair — at least to the extent that past elections that we used to train the model were free and fair. (Throughout American history, there has always been plenty of voter suppression and voter disenfranchisement.)

But for now, let me advance a few propositions:

- Even a small probability that the U.S. could become a failed or manifestly undemocratic state is worth taking seriously.
- There are a wide range of things that Trump could *attempt* to do, many of which would be quite damaging to the country, but they are not necessarily equally likely to succeed.
- Trump's actions are much more likely to actually change the result of the election if the outcome is close, and right now, the most likely scenario is that Biden wins by a not-so-close margin.

Beyond that, it's hard to estimate the probability that Trump could steal the election to any degree of precision. It requires, at a minimum, some knowledge of the probabilities in a free and fair election *plus* some knowledge of election law and how many votes could realistically come under dispute *plus* some theory of the institutional incentives of the Supreme Court and various other courts *plus* some opinions on how Congress might interpret the Constitution in the event of a disputed election. Maybe a panel of experts could get together and try to put together some reasonable bounds on the probability of various scenarios, but I don't know that any individual could — certainly not me.

After Trump's actions over the past few weeks, though, I wonder if there's some tradeoff between Trump's chances of winning legitimately and his willingness to engage in authoritarian rhetoric and behavior, even if it probably wouldn't succeed at stealing the election. It's not like this is coming entirely out of left field; Trump also said in 2016 that he wouldn't necessarily respect the election results. But his recent statements have come at a moment of increasing peril for his campaign. It's hard to know for sure, but I think Trump's comments might be more tempered if he were 2 points ahead in Wisconsin instead of 7 points down.



It's not easy to see which cards Trump has left to play or which contingencies could work in his favor enough for him to win — other than if the polls have been wrong all along.

Consider that Trump's convention produced, at best, a very meager bounce in his favor. His attempt to pivot the campaign to a "law and order" theme fell completely flat in polls of the upper Midwest. He's thrown the kitchen sink at Biden and not really been able to pull down Biden's favorables. His hopes that we'd turn the corner on COVID-19 before the election are diminishing after cases have begun to rise again in many states. His campaign, somehow, is struggling to hold on to enough cash to run ads in the places it most needs to run them. The New York Times and other news organizations are likely to continue publishing damaging stories on his taxes and personal finances from now until the election. And now he's seemingly lost the first debate.

If Trump intuits that he's unlikely to win legitimately — it's not hard to imagine him escalating his anti-democratic rhetoric and behavior. It's also not hard to imagine this rhetoric further eroding his position in polls. It's highly unpopular in focus groups (yes, take those with a huge grain of salt) and Trump's polling over the past several days has been particularly bad (although there's been a lot of other news, too).

So we could be headed for a vicious cycle where Trump increasingly gives up on trying to persuade or turn out voters and voters increasingly give up on him. But from a polling standpoint, this is one of the clearer elections to diagnose: Biden isn't home-free, but he's in a strong position. Nonetheless, the outlook for what's actually in store for America has rarely been more cloudy.

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## Footnotes

1. Technically speaking, Biden led by 7.1 points in our polling average when the debate began on Tuesday night. However, polls that were *conducted* mostly before the debate but published *since* the debate have pushed that average up to 7.6 points as of this writing.

# EXHIBIT 6

10/12/2020

Biden Got Some Of His Best Polls This Week | FiveThirtyEight

OCT. 7, 2020, AT 5:06 PM

## Biden Got Some Of His Best Polls This Week

His lead over Trump is widening, but will it last?

By Nathaniel Rakich

Filed under 2020 Election

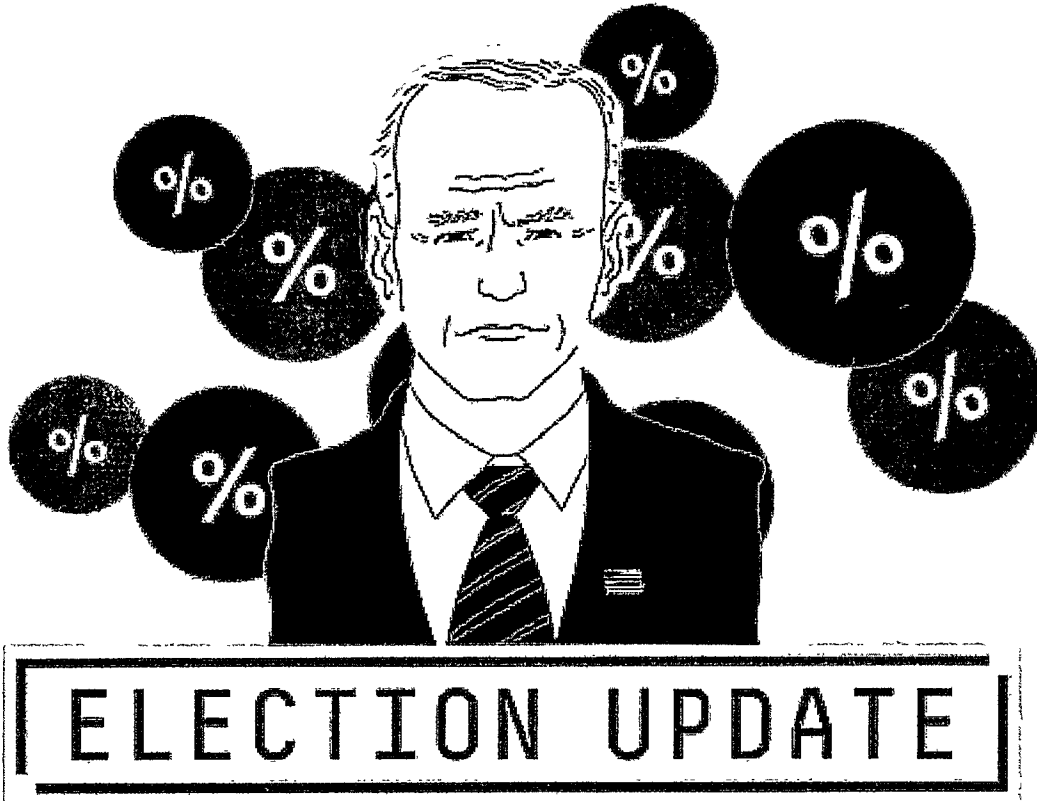


ILLUSTRATION BY FIVETHIRTYEIGHT / FABIO BUONOCORE

After Democrats' great midterm election, the 2020 election could be a second consecutive Democratic wave. According to FiveThirtyEight's forecasts, Joe Biden has an 84 in 100 chance of winning the presidential election, Democrats have a 68 in 100 chance of flipping the Senate and the party has a 94 in 100 chance of keeping the House.<sup>1</sup> Altogether, there's a 65 in 100 chance that Democrats will have full control of the federal government next year.

Democrats' hopes — and Republicans' fears — for another blue wave grew this week with the release of several polls that were among Biden's best of the entire year. It's hard to tell exactly why this is happening given all the news of the past couple weeks, but no

matter how you slice it, it's not good for President Trump. For instance, a national poll from CNN/SSRS gave Biden an eye-popping 16-point lead among likely voters. Monmouth University also gave Biden an 11-point lead in Pennsylvania in a high-turnout scenario and an 8-point lead in a low-turnout scenario. Quinnipiac University backed that up with its own Pennsylvania poll showing Biden up by 13 points, and added a Biden+11 Florida poll and a Biden+5 Iowa poll for good measure.

At the same time, some other high-quality pollsters produced more subdued results in a few key swing states, although they hardly qualify as good news for Trump. Siena College/New York Times Upshot put Biden at 45 percent and Trump at 44 percent in Ohio and gave Biden a 6-point edge in Nevada. And Marquette Law School, polling its home state of Wisconsin, returned a result of Biden 47 percent, Trump 42 percent. Those results in Ohio and Wisconsin are especially significant given Trump probably needs to win them in order to secure a second term.

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## Trump has 3 big problems heading toward Election Day | FiveThirtyEight



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What to make of all these polls? Throw them in an average, of course. And FiveThirtyEight's polling averages do suggest that Biden is widening his lead, although

the degree varies depending on which state you look at. (Nationally, though, Biden has gone from a 7.3-point polling edge two weeks ago to a 9.4-point lead today.)

## Biden is gaining in a number of battleground states

How FiveThirtyEight's polling average changed in the last two weeks, nationally and in key swing states

STATE	POLLING AVERAGE ON...		CHANGE
	SEPT. 23	OCT. 7	
Florida	D+1.6	D+4.6	D+3.0
New Hampshire	D+6.9	D+9.8	D+2.9
Pennsylvania	D+4.6	D+6.9	D+2.3
Georgia	R+1.1	D+1.0	D+2.1
Iowa	R+1.0	D+0.9	D+1.9
Ohio	R+1.0	D+0.7	D+1.7
North Carolina	D+1.2	D+2.3	D+1.1
Nevada	D+5.8	D+6.6	D+0.8
Arizona	D+3.8	D+4.4	D+0.6
Minnesota	D+9.2	D+9.5	D+0.3
Michigan	D+7.4	D+7.7	D+0.3
Wisconsin	D+6.8	D+6.9	D+0.1
Texas	R+0.7	R+1.5	R+0.8
<b>National</b>	<b>D+7.3</b>	<b>D+9.4</b>	<b>D+2.1</b>


SOURCE: POLLS

The topline takeaway from this is that, spurred by the Quinnipiac polls, Biden's lead has increased the most (from 1.6 points to 4.6 points) in Florida, which was previously one of the few bright spots on the map for Trump.

Biden has also further cemented his lead in Pennsylvania (where it went from 4.6 points to 6.9 points) and in swingy but oft-forgotten New Hampshire (thanks to several polls over the last couple weeks that have consistently given Biden an 8- to 12-point lead there).

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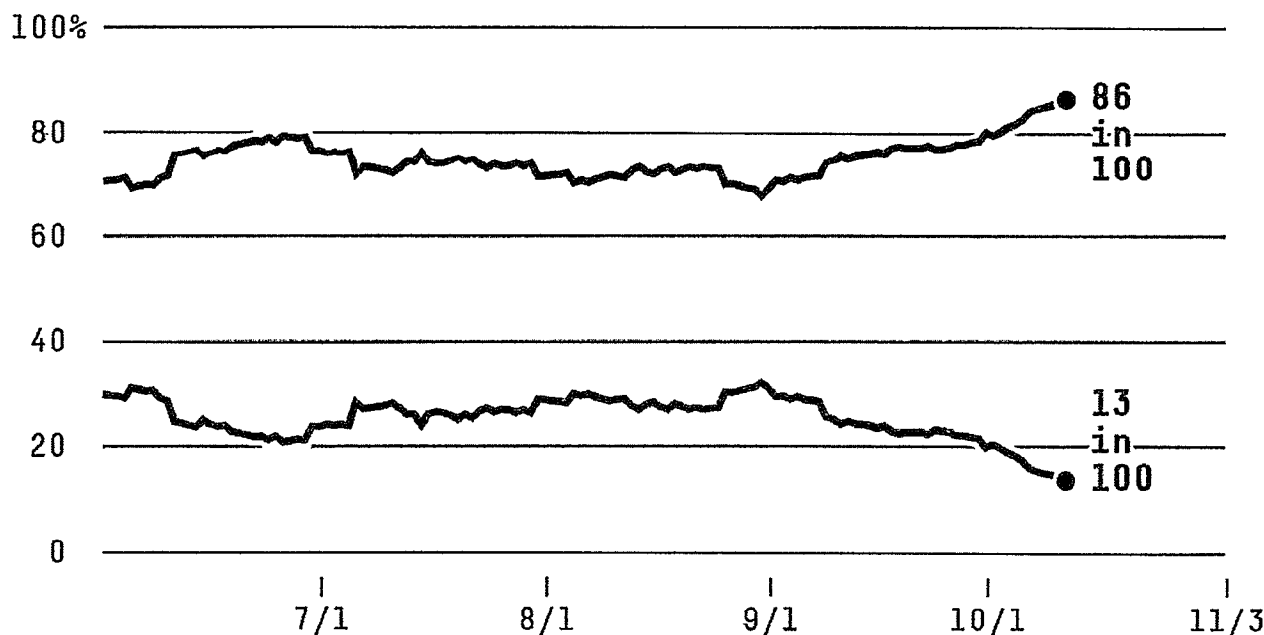
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However, several states haven't seen the same kind of shift, including Michigan and Wisconsin, whose demographics are similar to Pennsylvania's yet whose polling has not seemed to improve for Biden. However, the fact that Michigan and Wisconsin polling has stayed still while Pennsylvania's has zagged toward Biden has brought its polling average more in line with those two states' — right around Biden+7 or Biden+8. So the recent movement in Pennsylvania may just be correcting an anomaly from August and September when Pennsylvania polls were oddly weak for Biden.

In tandem with his polling bump, Biden's odds of winning are up, too. Here is a graph of our national forecast over time:

## How the forecast has changed

The forecast updates at least once a day and whenever we get a new poll

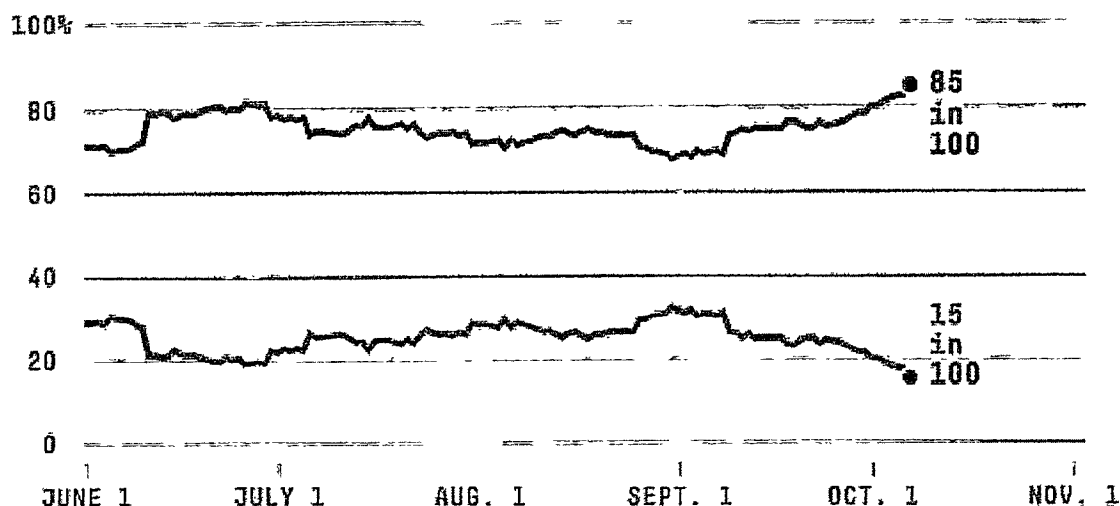


And here's how the race has changed in Pennsylvania, the likeliest tipping-point state in the Electoral College:



## How the forecast has changed in Pennsylvania

The forecast updates at least once a day and whenever we get a new poll. Click the buttons to see the ways each candidate's outlook has changed over time.



Before you overreact to these trends, though, remember that momentum doesn't exist in general elections. This could be the beginning of Biden running away with the election ... or it could be a temporary, post-debate sugar high for Biden. To take a high-profile, recent example, Hillary Clinton had an average 6.9-point national polling lead and an 88 in 100 chance to win the election on Oct. 17, 2016 — at the height of the anti-Trump backlash after the Access Hollywood tape — but fell back down to 3.9 points and a 71 in 100 chance by Election Day. Historically, trends are just as likely to revert to the mean as they are to continue.

That said, "reverting to the mean" this year might mean returning to the 7-point or so national lead that Biden held throughout September — and if he maintains that kind of lead on Election Day, he'll be an overwhelming favorite to win the election, even with Trump's Electoral College advantage.

In addition, because the pandemic has increased the popularity of mail voting, people are voting earlier than ever this year — at least 5.6 million votes have already been cast nationwide. So that throws yet another wrench into the equation: Even if there's a sudden tightening in the last week or two before the election, it may not matter as much as it did in 2016 — a large chunk of votes will already have been banked at a time when Biden was flying high.

### Footnotes

1. As of 3 p.m. on Wednesday, Oct. 7. Congressional numbers are from the Deluxe version of the forecast.

# EXHIBIT 7

2020 ELECTION

## Trump And The Republicans Are Doing Everything They Can To Confuse Voters Before The Election

Here's how the president and his party are trying to undermine the 2020 election, and how traditionally disenfranchised people are being targeted.

By Clarissa-Jan Lim and Ryan Brooks

Last updated on September 24, 2020, at 5:35 p.m. ET

Posted on September 24, 2020, at 3:17 p.m. ET



Shaquan Burton (left) looks over a voter registration form with Natasha Cherry-Perez from Uncommon Schools (right) in New York City, Sept. 22.

Michael M. Santiago / Getty Images

For nearly four years, President Donald Trump has waged a war on facts encouraging people to doubt science, distrust journalism, and

months, he's run a heightened campaign of confusion on a critical target: voting.

Trump, his administration, his campaign apparatus, and the Republican Party are deliberately undermining trust in the most fundamental democratic activity, marking a dangerous new turn in the GOP's long-standing efforts to limit the franchise.

The effort to undercut trust in voting isn't just about Election Day itself. On Wednesday, Trump again suggested he might attempt to stay in office should he lose in November, blaming time-tested voting methods for potentially preventing a peaceful transfer of power.

"Get rid of the ballots and you'll have a very peaceful — there won't be a transfer, frankly. There'll be a continuation."

Some in the Republican Party have worked to limit voting for decades, laying down the foundation for Trump to engage in overt voter suppression tactics unseen since the civil rights era. Racial disenfranchisement, which has long been a part of Black Americans' experience with voting, has advanced across the country as states and advocacy groups continue to battle over purging voter rolls, stringent voter ID laws, decreasing the number of polling places, and limiting the right to vote for formerly incarcerated people.

But in 2020, Trump and his allies have honed in on mail-in ballots and the Postal Service as people across the country seek ways to vote without contracting a deadly disease or spreading it to their loved ones. Mail-in ballots increase people's access to the polls, and Republicans know that greater access to voting in some areas or communities could potentially benefit Democrats.

~~And so Trump, through a pattern of confusing, contradictory,~~

~~Trump's more exaggerated statements, is making it extremely~~  
**BuzzFeed News** Trump And The Republicans Are Doing Everything They (

some cases, he is making voting seem dangerous or illegal. The goal is to sow doubt about the election's security, stability, and ultimately, its result.

### Voting by Mail

It sort of started, as many things do with Trump, on *Fox & Friends*. Just more than two weeks after he banned travel from Europe to the US because of the coronavirus, Trump was on his favorite right-wing talk show discussing his concerns about increased voting access in the 2020 election, echoing some Republicans' claims that it would be the downfall of the GOP.

"The things they had in there were crazy," he said about the Democrats' coronavirus stimulus package, which would have mandated specific early voting timelines for all states and expand access to voting by mail. "They had levels of voting that if you ever agreed to it, you'd never have a Republican elected in this country again."

**"They had levels of voting that if you ever agreed to it, you'd never have a Republican elected in this country again."**

Widespread opposition among Republican lawmakers against expanded voting access followed.

Just days later in Wisconsin, as the state was expected to hit its first COVID-19 peak, the Republican-led legislature decided against delaying the April primary. The state Supreme Court later struck down an executive order from Democratic Gov. Tony Evers to postpone in-

person voting and the US Supreme Court ruled in favor of Wisconsin. **BuzzFeed News** Trump And The Republicans Are Doing Everything They (



ballots. As a result, thousands of residents wearing masks waited in line for hours to vote — the photos ricocheted around the country. Weeks later, more than 50 people who had worked at the polls or went out to vote reported testing positive for the coronavirus.

Four months later, Texas leaders sued Harris County, the largest county in its state, to stop officials from sending all registered voters absentee ballots. The state Supreme Court has since temporarily blocked the county from doing so, and the case remains up in the air.

Both the Trump campaign and Republican National Committee have backed these state-level efforts. Earlier this month, BuzzFeed News identified at least 11 cases where the Trump campaign has asked to intervene to defend these state and local policies that activists say will curb access to voting safely during a pandemic, on top of more than half a dozen lawsuits that the campaign and the Republican National Committee have filed to prevent the expansion of mail-in voting.

Trump has zeroed in on mail-in voting specifically, making feverish claims that a common method of casting a ballot will lead to voter fraud. At a press briefing in April, he called mail-in voting “horrible” and “corrupt.” But when asked by a reporter about his vote by mail in the Florida presidential preference primary the month before, Trump said he did that “because I’m allowed to.” (Vice President Mike Pence and a number of senior White House aides have also relied on vote-by-mail in the past.)

Since then, he has built a case against universal mail-in voting — which he alternately calls “100% mail-in voting” and a system of “unsolicited ballots” — based on conspiracy theories, fear, and unproven claims: Mail drop boxes are “not Covid sanitized” and will be robbed; mail-in ballots will be forged, illegally printed thousands of

times, and fraudulently signed; literally anyone and everyone, alive or dead, will be able to cast a ballot; and people will be able to cast a ballot if they are

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universal mail-in voting, where election officials proactively mail ballots to all eligible voters rather than only to those who request them. Mail-in voting has strict procedures to ensure each ballot's veracity. There was barely any truth to Trump's claims, but the tweets to his 86 million followers came as a barrage.

"Absentee Ballots are a great way to vote for the many senior citizens, military, and others who can't get to the polls on Election Day," he tweeted on Apr. 8. "These ballots are very different from 100% Mail-In Voting, which is 'RIPE for FRAUD,' and shouldn't be allowed!" (Crucially, voting by mail and absentee voting — different states prefer different terms — are essentially the same thing: systems that deliver ballots to voters.)

"The United States cannot have all Mail In Ballots. It will be the greatest Rigged Election in history," he said in a May 24 tweet. "Some absentee OK, when necessary." (Again, absentee and mail-in ballots are basically the same thing. And Trump's own election integrity commission found in January 2018 that there was no evidence of widespread fraud.)

"With Universal Mail-In Voting (not Absentee Voting, which is good), 2020 will be the most INACCURATE & FRAUDULENT Election in history," he tweeted on July 30. "Delay the Election until people can properly, securely and safely vote???" (See above.)

"The big Unsolicited Ballot States should give it up NOW, before it is too late, and ask people to go to the Polling Booths and, like always before, VOTE. Otherwise, MAYHEM!!! Solicited Ballots (absentee) are OK," he tweeted on Sept. 17. (Five states with universal mail-in voting had established that as their primary voting method long before the pandemic; there has not been mayhem in their elections. Trump

~~himself and his appointees have undermined the Postal Service's~~

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McDonald said that the president "correctly distinguished" between universal mail-in ballots and absentee ballots, a distinction that Democrats and mainstream media "purposely ignore to sow confusion."

"Everyone, including the mainstream media, Democrats, and Republicans, wants to trust the election results on November 3," McDonald told BuzzFeed News. "We are fighting to make sure that's the case, and any argument otherwise is a conspiracy theory intended to muddy the waters and disenfranchise voters even further."

But then, in August, Trump appeared to throw out his own made-up distinction of mail-in voting and absentee voting in a tweet directed at his supporters in Florida, a critical battleground state.

"Whether you call it Vote by Mail or Absentee Voting, in Florida the election system is Safe and Secure, Tried and True. ... so in Florida I encourage all to request a Ballot & Vote by Mail!" he tweeted.

Trump's crusade has put Republicans in a "difficult position," Richard Hasen, a University of California, Irvine professor and the author of *Election Meltdown: Dirty Tricks, Distrust, and the Threat to American Democracy*, told BuzzFeed News.

Mail-in ballots have actually helped Republicans win in key states like Florida, Hasen said. "It's caused him and Republicans to try to draw somewhat nonsensical distinctions between absentee ballot and vote-by-mail."

To add to the confusion, Trump's campaign sent out material to voters encouraging them to apply for an absentee ballot. And in September, he urged supporters in Minnesota, New Hampshire, and Michigan to ~~get an absentee ballot, calling them "safe and secure."~~

*Trump campaign / Via Vincent Hutchings*

And then, at two separate events in North Carolina in early September, Trump encouraged the very sort of voter fraud that he was also railing against. He said people should try to vote twice (which is a federal crime), first by absentee ballot and then in person on Election Day, framing it as a way to test the security of the election process. He also repeated this on Facebook and Twitter.

A White House spokesperson told BuzzFeed News that Trump was not advocating for people to break the law, but to make sure they verify that their vote is counted.

Because Trump often floods people with an onslaught of contradictory messages, it's hard to know where exactly he stands on voting by mail. Either Trump believes that mass fraud can be committed more easily by mail-in voting — which there is no evidence for — or the president himself is misinformed, which is also unlikely since he appears to

**BuzzFeed News** believe in the value of the absentee ballots that he has repeatedly cast. Trump And The Republicans Are Doing Everything They (

discourage voting on the part of one's opposition," said Vincent Hutchings, a research professor at the University of Michigan's Center for Political Studies, "not because one has a good faith belief, however accurate [or not] that may be, that there's something fraudulent about mail-in voting."

### **The Post Office**

As voting by mail emerged as a more appealing option for people who did not want to risk going to the polls, the US Postal Service, which has long delivered ballots to voters with no major issues, found itself suddenly a Trump target.

With Trump donor Louis DeJoy newly positioned as postmaster general in May, the USPS began enacting severe cost-cutting measures and removing mailboxes in certain cities, a move that drew widespread criticism.

Trump also began escalating his attacks on the Postal Service, saying it was enriching Amazon while becoming "dumber and poorer." He also initially opposed including \$25 billion in emergency funding for the Postal Service in a coronavirus relief bill.

The reason? Trump didn't want to fund the USPS so that it wouldn't be able to handle an increased load of mail-in ballots. In other words, the US president wanted to use the power of his office to prevent people's votes from counting — and he admitted it. "They need that money in order to have the post office work so it can take all of these millions and millions of ballots," Trump said on Fox Business. "If they don't get those two items, that means you can't have universal mail-in voting because they're not equipped to have it."

NAACP President Derrick Johnson told BuzzFeed News in August that

the Trump administration's interference with the Postal Service was

**BuzzFeed News** Trump And The Republicans Are Doing Everything They (

least since the voter suppression tactics of the 1960s.”

On Sept. 17, a federal judge temporarily blocked all operational changes that DeJoy had ordered, saying he and the president were “involved in a politically motivated attack on the efficiency of the Postal Service” that could impact the election. DeJoy’s cost-cutting measures were also reversed. Days later, another federal judge ordered the Postal Service to prioritize election mail.

Still, the Postal Service’s delays with mail delivery in the past few months — particularly in places regarded as key swing states — have sparked concern over its ability to handle an influx of mail-in ballots. State election officials have said that the USPS has not provided proper guidance or communication to help them prepare for the surge of ballots.

Shamarie McDonald fills out an absentee voter registration form in Crown Heights, Brooklyn, Sept.



voting by mail in the 2020 election. In September, the Postal Service mailed postcards to households across the country advising them to “request their mail-in ballot” early. In a state like Colorado, however, where every voter receives a ballot by mail without having to request one — Colorado is one of the five states that had universal mail-in voting pre-pandemic — that guidance created confusion.

“When we asked @USPS not to send the postcard with misinformation to voters in Colorado they flat out refused,” Colorado Secretary of State Jena Griswold tweeted. “Confusing voters about mail ballots in the middle of a pandemic is unacceptable.”

Griswold has since filed a lawsuit against the USPS, alleging that the agency sent out “false statements that will confuse Colorado voters.”

### **Recent Voter Suppression**

Trump and his party’s tactics are having an effect. A September report from the Pew Research Center found that many voters have concerns about voting during the pandemic and are doubtful of the US Postal Service’s ability to deliver ballots on time.

Democrats were more likely than Republicans to expect difficulties when it came to casting their ballot and in the integrity of the 2020 election, but altogether roughly half of US voters in an August poll said they were expecting to have difficulties voting. That result is drastically different from the midterm elections of 2018, when 85% of voters said it would be easy to vote compared to the 15% who said they thought it would be difficult.

The Republican National Committee immediately responded to a request for comment. White House deputy press secretary Sarah Matthews told BuzzFeed News that there is “ample evidence that

ballots cast by mail are more prone to contestation, less likely to be

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**BuzzFeed News** Trump And The Republicans Are Doing Everything They (

those cast in a voting booth.”

But election experts dispute the claim that voter fraud — which is extremely rare — will be widespread because of increased mail-in ballots, a claim that Trump and his party have repeatedly asserted.

"We have not seen, historically, any kind of coordinated national voter fraud effort in a major election, whether it's by mail or otherwise," FBI Director Christopher Wray told Congress on Thursday.

“Enthusiasm amongst our voters to turnout for President Trump and Republicans up and down the ballot is incredibly high. Some are going to vote absentee through the proper process as they always do – and you will see us encouraging them to do that – but many of our voters just prefer to vote in person,” RNC National Press Secretary Mandi Merritt told BuzzFeed News.

"There is a major distinction between a proper, typical absentee ballot process and what the Democrats are fighting for, which would bring chaos to our election," she said, for which there is no factual basis.

"Our superior get-out-the-vote operation will work to ensure those who want to vote through the proper process are able to do so, while our legal team is fighting to protect against Democrat attempts to damage the integrity of the process.”

The pattern of the past few months has served to further disenfranchise communities of color during a time when many are already disproportionately impacted by a deadly virus.

In the last decade, 25 states have enacted laws that strengthened voting restrictions and made it harder for citizens to vote, particularly since the Supreme Court in 2013 struck down parts of Section 4 of the Voting Rights Act, which provided a formula for determining which

~~states would need to have any changes to voting reviewed and~~

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especially harder for marginalized communities to vote.

“Because our party system in the US, the distribution of support of the two major parties cleaves so heavily along racial and ethnic lines,” Hutchings said, that “if one wants to benefit one party at the expense of another, doing so is efficient by focusing on people based on their race and ethnicity.”

“You can’t look at someone and see what their partisanship is, but you can look at them and see their race,” Hutchings said. “And if race correlates with party, then, well, it’s completely logical — if perhaps offensive and reprehensible but certainly rational — for people to target racialized populations in order to gain partisan advantage.”

That racial line is far more pronounced in states like Florida, where formerly incarcerated people who were convicted of felonies recently regained the right to vote after an overwhelming vote from state residents. According to a 2016 study from the Sentencing Project, nearly 1.7 million people, or 10.4% of the state’s population — 21.6% of Black Floridians — were disenfranchised by the state’s laws before the recent change.

Soon after the measure won at the ballot box, the Republican-controlled state legislature passed a law that requires former felons to pay off any court-related debts before their right to vote would be restored. A federal appeals court with multiple Trump-appointed judges upheld it.

Georgia is another example. A myriad of those issues were on display during Georgia’s gubernatorial election in 2018, when the Democratic nominee, Stacey Abrams, ran against Brian Kemp — who was serving as Georgia’s secretary of state and was in charge of the state’s

elections.

Stacy Abrams, wearing a "vote" mask, attends the funeral service in Atlanta for the late representative John Lewis, July 30.

*Pool / Getty Images*

In the month ahead of the election, Kemp's office held 53,000 Georgians' voter registration applications on a "pending" list because the state's rules required the name listed on their application to accurately match their government ID. An AP analysis found that 70% of people on that list were Black. Kemp's office also performed regular "voter roll maintenance," which regularly removed people who hadn't voted in the past seven years. Between 2012 and 2018, 1.4 million voter registrations in Georgia had been canceled.

Abrams' and Kemp's campaigns were virtually tied on Election Day. Kemp declared victory when it seemed like he had surpassed the threshold to win the election. Abrams initially refused to concede, citing complaints from voters about their mail-in ballots and provisional ballot not being counted by Election Day. After a dayslong legal fight, Abrams effectively ended her campaign and launched an organizing group, Fair Fight, to protect voting rights around the country. She added she would be filing a lawsuit against the state of Georgia "for gross mismanagement" of the election.

many of the same issues voters are now facing: with voting by mail gaining popularity, issues emerging with the USPS, and in-person polling places experiencing a shortage of resources and longer wait times during the pandemic.

“The problems that Georgia saw in November 2018 were present, if not even more so, in June 2020. You had voters who requested mail-in ballots but never received one, you had 20 counties needing to extend voting hours, you had a secretary of state sending wrong instructions to voters,” a spokesperson for Fair Fight told BuzzFeed News.

“Voters need a team of folks advocating for them on the ground, answering their questions, sending them helpful information, and holding elections officials accountable.”

### **The Presidential Election**

Trump has taken aim at the country’s election system before — during the race he won, in 2016.

In the lead-up to Election Day, trailing in most polls, Trump declared the election “rigged” in favor of Hillary Clinton.

And after taking office, Trump claimed — with no evidence — that millions of people had voted illegally. That, baselessly explained, was the reason he didn’t win the popular vote.

In May 2017, he issued an executive order forming an election integrity commission to investigate voter fraud. By January 2018, the commission had been disbanded after it couldn’t find evidence it was happening on a widespread basis — the Justice Department charged only 19 foreigners with illegally voting during the 2016 election.

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The shift in 2020 isn’t that Trump is undermining an entire election. **BuzzFeed News** Trump And The Republicans Are Doing Everything They (

ballots are delivered, and targeting people who have traditionally been disenfranchised.

And it may end up weakening trust in the political system as a whole. “Both on behalf of his supporters who believe that the system is rigged to help Democrats, and on behalf of his opponents who believe that Trump is doing this to make it harder for people to vote by mail in the middle of a pandemic and trying to rig the election in his favor,” Hasen said.

“It’s a double whammy,” Hasen added. “It lowers the confidence of people on both sides on the fairness of the election.”

Hutchings said it very well may work.

“It could [have an impact] in the margins,” he said, “and of course if the election is determined at the margins, then it could be consequential.”



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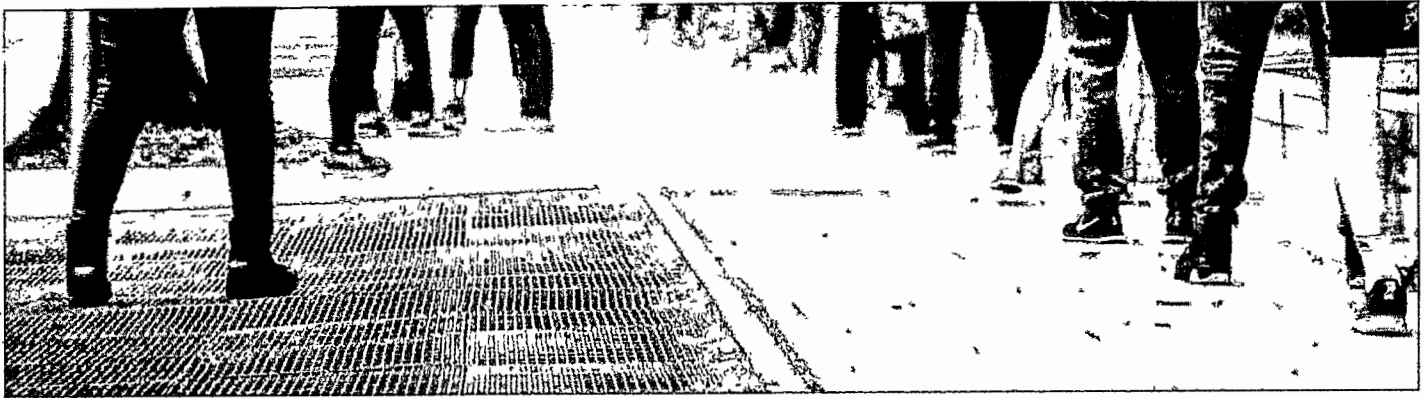
## There's nothing stopping the RNC from using voter intimidation tactics in November now that a decades-old agreement has ended, experts warn

Yelena Dzhanova Sep 13, 2020, 3:33 PM



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**People wear masks as they wait in line to vote at a voting center during primary voting in Washington, Tuesday, June 2, 2020. (AP Photo/Andrew Harnik) Associated Press**

**November will mark the first presidential election that's not bound by the terms of the 1982 consent decree.**

**The decades-old agreement between the Republican and Democratic national committees limits the RNC's participation in voter intimidation and suppression tactics.**

**It was set after the DNC accused the RNC of engaging in voter intimidation when off-duty officers were sent to patrol voting in New Jersey communities of color in 1981.**

**One concern is that the RNC will once again send off-duty officers to the polls in neighborhoods with large populations of people of color, where residents are skeptical of police presence.**

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For nearly 40 years, the Republican National Committee was barred from engaging in voter intimidation tactics and "ballot security" measures like paying law enforcement to appear at polling sites.

But in 2018, a federal judge lifted the restriction, ending the 1982 consent decree. This year will be the first time in nearly four decades that a presidential election is held without this agreement in place — an addition to the heap of challenges already influencing voters amid a global health crisis.

The coronavirus pandemic has upended US elections, bringing on postponed primaries, changes to in-person polling sites, and a battle over expanded vote-by-mail.

"We've never seen a presidential election quite like this one because the dynamics of it are just so different," Jon Greenbaum, chief counsel and senior deputy director for the Lawyers' Committee for Civil Rights Under Law, told Business Insider.



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In 1981, Democrats accused Republican officials of voter suppression after the RNC sent off-duty police officers to patrol polling sites in Black and Latino neighborhoods, Greenbaum said. The DNC and RNC agreed to settle the case rather than go to court, leading to limitations in the ways the RNC can monitor voting. Republicans did not admit to any wrongdoing but agreed to stop policing communities of color.

Since then, DNC officials invoked the agreement multiple times in the course of its near-40-year run, acting as a check on the RNC if it engaged in dubious tactics on or ahead of Election Day.

### **Voting rights groups are on the lookout for intimidation**

"In New Jersey, what you had was you had off duty state and local law enforcement people outside the polls with guns, with walkie-talkies, with armbands, that were identifying themselves as being ballot security. You could have a repeat of that," Greenbaum told Business Insider, adding that such intimidation tactics are likely to happen "particularly in an election that's as charged as this one — and in a country that's charged as it is right now."



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Earlier this month, President Donald Trump said he'd want to police officers stationed at polling sites to prevent alleged voter fraud.

When reached for comment, Trump 2020 General Counsel Matthew Morgan told Business Insider that "Republicans are committed to making sure the polls are being run correctly, securely, and transparently to deliver the free and fair election Americans deserve."

Voting-rights groups remain on alert, watching for threats and actions like sending law enforcement to voting sites that could signal the potential for voter intimidation and suppression.

If officers are placed at polling sites this November, just as they were in 1981, "one of the things that we would do is go to court," Greenbaum said.

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There's also concern that the RNC might once again engage in tactics like this. When the decree came to an end in 2018, experts warned that Trump could try to push RNC officials into deploying law enforcement officers to the polls for him.

"If he tries to use the RNC in this activity, there's now nothing under this consent decree that would stop him," said Richard Hasen, an election law expert from the University of California, Irvine, in a 2018 interview with NPR. "And so I do think to the extent that Trump controls the RNC, we may see more activities aimed at so-called ballot security, which could be seen as suppressing the votes of minority voters."

The Trump campaign privately acknowledged in November that the end of the 1982 decree was "a huge, huge, huge, huge deal" for Republicans and for the president.

The RNC has already put together a \$20 million plan that pays for up to 50,000 volunteers to surveil voters and polling sites in 15 crucial states. These volunteers are tasked with disputing what they consider suspicious voters or ballots.

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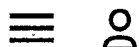
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Mandi Merritt, national press secretary at the RNC, said in a statement to Business Insider that Republicans are focused on "getting more people to vote, certainly not less."

"Now that the playing field has been leveled, we can do what Democrats and other Republican groups have been able to do for decades: ensure that all votes are counted properly and that more people can vote through our unmatched field program," Merritt said.

When reached for comment, a DNC official detailed to Business Insider various practices the organization has in place to stay on top of voter intimidation tactics. The group will have lawyers and volunteers present at polling sites around the country, for example, who will ensure that everyone who shows up to vote in person counts. The official also directed Business Insider to IWillVote.com, a website set up and paid for by the DNC that provides people in every state with information on how to make sure their vote counts in November.

The DNC will also train and deploy its own poll watchers with the goals of increasing voter turnout for Democratic candidates and keeping an eye out for any improper practices by Republicans.



Several states told Business Insider that there are no plans to deploy local law enforcement to polling sites in November. But at least five states said they have a law in place that allows them to do so.

If voters experience attempts at suppression or fraud, they can contact the Election Protection Hotline by calling 1-866-OUR-VOTE.

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# EXHIBIT 9

# Federal judge issues scathing decision to allow more ballot drop boxes in Ohio

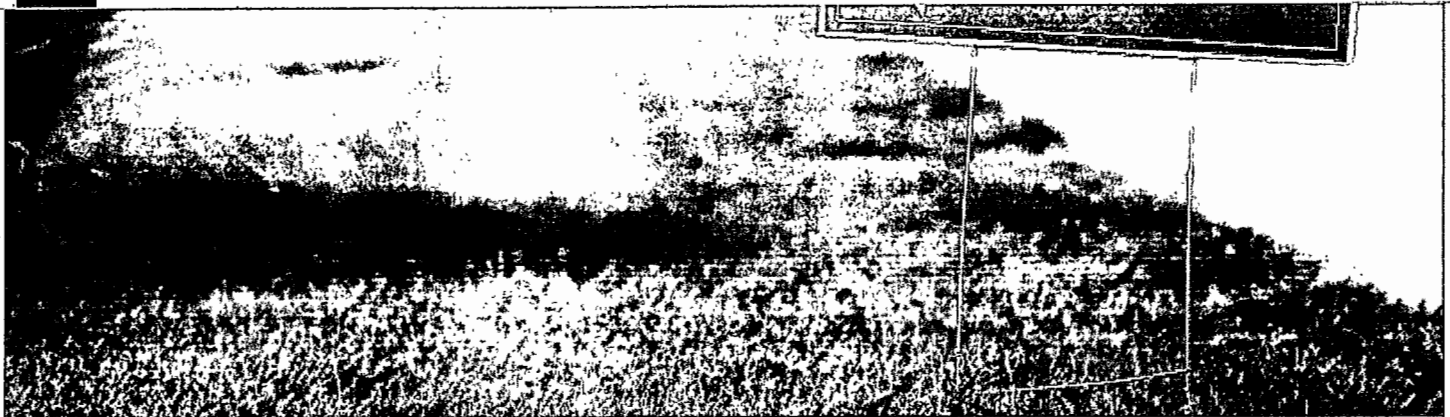
By Ross Levitt and Devan Cole, CNN

Updated 9:51 PM ET, Thu October 8, 2020



CNN politics

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People wait in line to vote early at the Hamilton County Board of Elections, Tuesday, October 6, in Norwood, Ohio.

**Washington (CNN)** — A federal judge on Thursday blocked an order from Ohio's secretary of state that would have required counties in the state to install ballot drop boxes just at the local election office, allowing additional drop boxes to be placed in areas that need them.

At issue was an order earlier this week from Republican Secretary of State Frank LaRose that limited ballot drop boxes to one location per county: a county's election office. LaRose had been interpreting an Ohio law that states the only two ways to return an absentee ballot are to mail it or "personally deliver it to the director" as meaning that if a voter chooses to use a drop box, it must be at the County Board of Elections office, because that is still considered to be delivering the ballot directly to the director.

But federal Judge Dan Polster said LaRose's order puts a burden on more populous counties -- like Cuyahoga, which includes Cleveland -- and which he says has "a very serious looming problem" that could jeopardize the right to vote.

"While it may be said that the 7,903 registered voters in Noble County may find a single drop box location sufficient, the record demonstrates that the 858,041 registered voters in Cuyahoga County will likely not," Polster wrote in a scathing opinion.

Polster reserved his harshest language for LaRose, who, he says, under Ohio law has the ability to allow counties to expand the number of locations where drop boxes can be. Cuyahoga wants them at public libraries.



"The Secretary is continuing to restrict boards from implementing off-site collection, and he appears to be doing so in an arbitrary manner," Polster wrote. "The Court has given the Secretary every opportunity to address the problem ... and he has been unwilling or unable to do so."

With less than a month until Election Day, the injunction is sure to please Democrats in the state, who have cast LaRose's directive as a form of voter suppression. The ruling comes amid an election in which officials are expecting to see an unprecedented number of mailed and dropped-off ballots as voters look for ways to avoid going to polling centers, where the coronavirus could spread.

Polster's ruling makes him the latest judge to say that claims of election fraud are unsubstantiated: "It is even easier to reject the Secretary's second justification. No evidence was introduced at the hearing to support the conclusory reference to fraud in the Secretary's brief."

LaRose had asked Polster to stay any decision so that he would have time to appeal, but Polster wrote that he was not willing to do so.

"The Court will not issue a stay. As stated above, we are in the middle of the worst pandemic in a century coupled with reasonable concern over the ability of the U.S. Postal Service to handle what will undoubtedly be the largest number of absentee voters in Ohio's history. The Secretary has not advanced any legitimate reason to prohibit a county board of elections from utilizing off-site drop boxes and/or off-site delivery of ballots to staff," the judge

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Kristen Clarke, executive director of the National Lawyers Committee for Civil Rights Under Law, praised the ruling, saying it will benefit voters of color in particular.

"The court's order protects the right to vote for tens of thousands of Ohioans, especially Black voters and people of color who disproportionately reside in some of the state's major population centers. No voter should have to sacrifice their health and well-being to cast their ballot," Clarke said. "Drop boxes have proven to be a secure method of collecting ballots, and are crucial in allowing voters to safely cast their vote during this unprecedented pandemic."

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# EXHIBIT 10



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# Federal judge blocks Texas governor's directive limiting ballot drop boxes to one per county

By Ross Levitt and Chandelis Duster, CNN

Updated 2:26 PM ET, Sat October 10, 2020

**(CNN)** — A federal judge late Friday blocked Texas Gov. Greg Abbott's directive that limited ballot drop boxes to one per county.

Several groups had filed suit over the controversial directive, issued last week, because they felt it would suppress voters -- particularly in larger counties.

Judge Robert Pitman agreed, writing, "By limiting ballot return centers to one per county, older and disabled voters living in Texas's largest and most populous counties must travel further distances to more crowded ballot return centers where they would be at an increased risk of being infected by the coronavirus in order to exercise their right to vote and have it counted."

Texas Democrats cheered the judge's order, calling it "common sense."

"Frankly, it ought to be a shock to all of us that such a ruling is even required," Texas Democratic Party Chair Gilberto Hinojosa said in a statement.

CNN reached out to Abbott's office for comment on Friday.

Ahead of the start of early voting in Texas on October 13, the directive had required large counties, regardless of population and area, to limit their number of drop-off locations for mail-in ballots to one. Abbott, a Republican, had argued the directive was necessary to ensure the drop boxes remained secure. But the judge said the risk of disenfranchising voters outweighed those concerns.

The judge was also troubled by Abbott's late change of policy and felt he needed to rule immediately.

"The public interest is not served by Texas's continued enforcement of a proclamation Plaintiffs have shown likely violates their fundamental right to vote," Pitman wrote.

Due to the coronavirus pandemic and some voters' concerns about voting in-person, requests for absentee and mail-in ballots have increased across the US.

In Texas, state Republicans have successfully blocked Democrats' attempts to expand mail-in voting, citing voter fraud. While rare instances of voter fraud from mail-in ballots do occur, it is nowhere near a widespread problem in the US election system.

In his statement announcing the move last week, Abbott said cutting drop box locations would "maintain the integrity of our elections."

"As we work to preserve Texans' ability to vote during the COVID-19 pandemic, we must take extra care to strengthen ballot security protocols throughout the state. These enhanced security protocols will ensure greater transparency and will help stop attempts at illegal voting," Abbott said on October 1.

But -- much as several other judges have done -- Pitman said the state did not do enough to prove that voter fraud was a legitimate problem.

The state's justifications for the directive, Pitman wrote, "do not present a sufficiently relevant and legitimate interest in light of the burden it imposes on Plaintiffs," adding that the voting rights groups have shown that the directive "likely violates their fundamental right to vote under the First and Fourteenth Amendments."

Before Abbott's order, several counties had already begun to roll out multiple absentee voting drop-off locations. Harris County, the state's most populous county and a Democratic stronghold, had to reduce its 12 drop-off locations down to one on October 2. Over 40% of Harris County residents are Latino and nearly 20% are Black.

Harris County Clerk Chris Hollins said in a statement that the decision was a "victory for voting rights." He said Harris County will have its 11 satellite drop box locations open on Monday, a day before early voting begins.

"The Governor's suppressive tactics should not be tolerated, and tonight's ruling shows that the law is on the side of (the) Texas voter," Hollins said to CNN. "Seniors and voters with disabilities across Harris County need these drop-off locations to deliver their mail ballots safely and conveniently during the global pandemic. We shouldn't be playing politics with voters' lives."

The League of United Latin American Citizens, one of the plaintiffs, said in a statement that Abbott is "trying to prey on the fear of the pandemic which will keep Hispanics from wanting to risk their lives by going to the polls in person."

"Instead, they and many other qualified, legal voters prefer to safeguard their well-being by dropping off their ballot at authorized locations near them and (Friday)'s injunction guarantees they will be able to do so," Domingo Garcia, LULAC's national president, said.

Texas has been traditionally Republican over the last several decades, but Democrats think it is in play in the November election. Multiple polls have found a tight race between President Donald Trump and former Vice President Joe Biden in the Lone Star State.

*This story has been updated with more from the decision, reaction and background information.*

*CNN's Ed Lavandra and Veronica Stracqualursi contributed to this report.*

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# EXHIBIT 11



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JULY 16, 2020 6:00AM ET

# The Plot Against America: The GOP's Plan to Suppress the Vote and Sabotage the Election

Blocking ballots, intimidating voters, spreading misinformation — undermining democracy is at the heart of Trump's 2020 campaign

By **ANDY KROLL** 

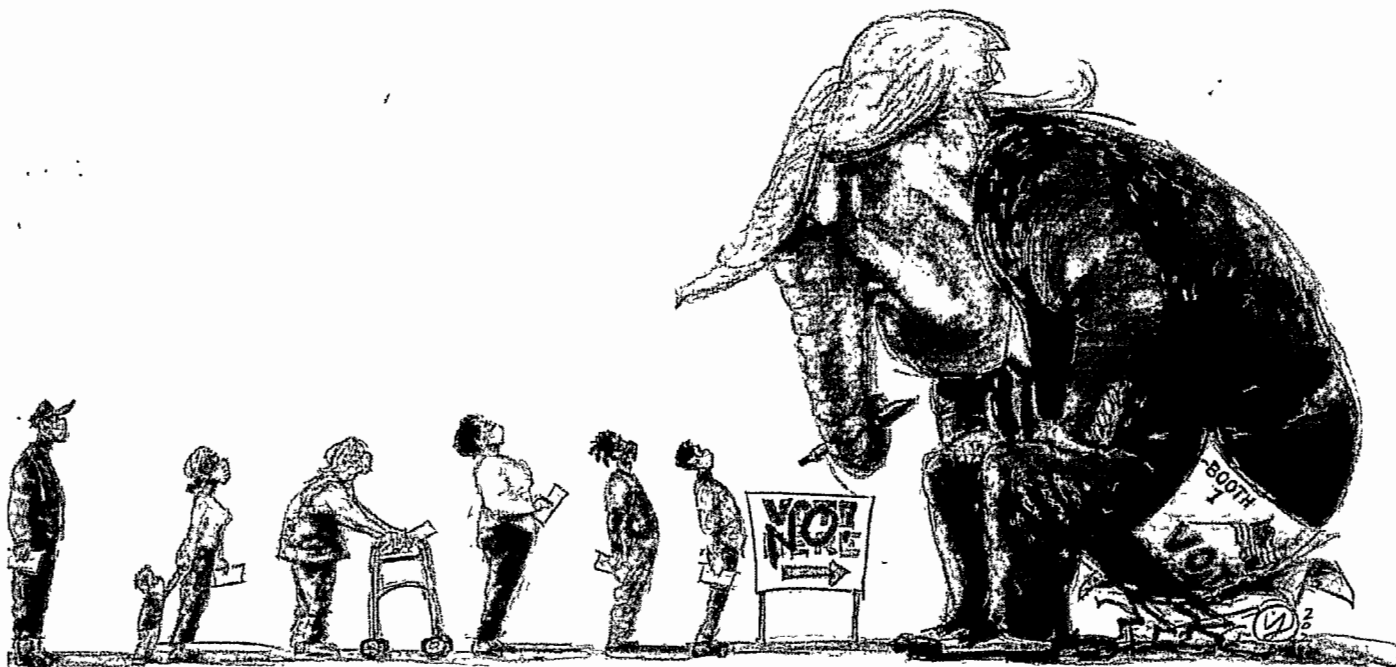


Illustration by Victor Juhasz for Rolling Stone

**In June, President Trump** sat in the Oval Office for one of his periodic interviews-turned-airing-of-grievances. When the conversation turned to the **2020 election**, Trump singled out what he called the “biggest risk” to his bid for a second term. It was not the mounting death toll from COVID-19, or further economic damage inflicted by the pandemic, or anything else a reality-dwelling president might fret about.





invited. He was referring to the series of lawsuits filed by his campaign and the Republican National Committee that fight the expansion of mail-in voting and seek to limit access to the ballot box in November. “We have many lawsuits going all over,” he said. “And if we don’t win those lawsuits, I think — I think it puts the election at risk.”

Going into 2020, Trump had the political winds at his back with a strong economy, roaring stock market, and historically low unemployment. Then came COVID-19. As of this writing, more than 135,000 Americans are dead from the virus, more than 3 million have gotten infected, and the economy has tipped into Great Depression territory. With Trump at the helm, the U.S. government’s response to the coronavirus pandemic has ranked as one of the worst anywhere in the world.

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By midsummer, the president’s approval ratings had sunk to the high 30s. According to Gallup, in the past 72 years **only one incumbent president** with a comparably dismal standing, Harry Truman, went on to win re-election. The possibility of Trump going down in flames, Hindenburg-style, and bringing the rest of the Republican ticket with



But Trump defied the prewritten obituaries in 2016, and he could do it again this year. In recent months, a central theme of his re-election strategy has come into clear, unmistakable focus: Trump and his Republican enablers are putting voter suppression front and center — fear-mongering about voting by mail, escalating their Election Day poll watching and so-called ballot-security operations, and blocking funding to prepare the country for a pandemic-era election. “The president views vote-by-mail as a threat to his election,” a lawyer for the Trump campaign recently told *60 Minutes*. Attorney General William Barr told Fox News that vote-by-mail “absolutely opens the floodgates to fraud.” And Trump blasted out in a May tweet that “MAIL-IN VOTING WILL LEAD TO MASSIVE FRAUD AND ABUSE. IT WILL ALSO LEAD TO THE END OF OUR GREAT REPUBLICAN PARTY. WE CAN NEVER LET THIS TRAGEDY BEFALL OUR NATION.”

“They’re shouting the quiet part out loud,” Marc Elias, one of the Democratic Party’s top election lawyers, tells *Rolling Stone*. “They’re not whispering it. They’re shouting it.”

**Justin Clark**, a senior lawyer on the Trump 2020 campaign, had a message for the group of Republican lawyers gathered at a members-only club in Madison, Wisconsin, last November. Every time he met with President Trump, Clark **told** the group, Trump asked, “What are we doing about **voter fraud**? What are we doing about voter fraud?”

“Traditionally, it’s always been Republicans suppressing votes in places,” Clark said. He would later explain that he was referring to what Democrats say about Republicans, but it was all part of a larger point — namely, to ensure the president’s election, the Trump campaign and RNC were stepping up their efforts to root out the supposed scourge of “voter fraud.”

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“It’s going to be a much bigger program, much more aggressive program, a better funded program,” said Clark. The president, he assured the group, “believes in it, and he will do whatever it takes to make sure it’s successful.”

To be clear, rampant voter fraud is a myth, a fantasy dreamed up by those who need a pretext to make it harder for certain people to exercise their right to vote. Instances of in-person and mail-in voter fraud are extremely rare, according to decades of data and academic research. The conservative Heritage Foundation — whose co-founder Paul Weyrich once told a group of evangelical leaders that “I don’t want everybody to vote” because “our leverage in the elections quite candidly goes up as the voting populace goes down” — is one of the loudest proponents of the voter-fraud myth. Yet according to Heritage’s own research, in the past 20 years, 0.00006 percent of all mail-in ballots cast were fraudulent. “There is no support for the argument that mail-in voting is a problem,” says Lorraine Minnite, a political-science professor at Rutgers University and author of *The Myth of Voter Fraud*.

But that isn’t stopping Trump and the Republican Party from going on the offensive. Trump officials argue that Democrats are using COVID-19 as an “excuse and pretext” to rush through drastic changes like universal vote-by-mail that are intended to benefit their candidates and that would inject more uncertainty into our elections. “President Trump will not stand by as Democrats attempt to tear apart our entire election system just months before votes are cast,” Clark, the Trump campaign lawyer, said in a statement to *Rolling Stone*.

In February, the Trump campaign and the Republican National Committee announced that they would spend \$10 million on voting-related lawsuits in 2020 — a figure that has since doubled to \$20 million. The RNC has so far filed lawsuits in more than a dozen states, including the battlegrounds of Colorado, Minnesota, Michigan, Wisconsin, Pennsylvania, and Florida. These suits are a mix of offense and defense: Some attempt to block litigation brought by Democratic groups to expand mail-in voting in response to the coronavirus pandemic. Others seek to invalidate state-level policies by saying that expanding access to mail-in ballots invites fraud. But the uniting theme of the RNC’s suits, says Rick Hasen, a University of California, Irvine law professor and author of



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In Pennsylvania, for instance, the RNC is suing the state government and election boards in all 67 counties to ban the use of secure drop boxes for submitting take-home ballots and to eliminate the requirement that poll watchers can only serve in the county where they live. In Florida, Republicans have sued to block efforts that would make the state pay for postage on mail-in ballots, would change state law so that any mail-in ballot postmarked by the date of the election (as opposed to received by Election Day) will be counted, and would allow paid organizers to gather and submit completed absentee ballots.

It's a sign of how aggressive and deep-pocketed the GOP legal strategy is that the party is waging legal battles in states that Trump has no chance of winning. In May, the RNC and two other groups sued California Gov. Gavin Newsom, a Democrat, over a newly announced plan to mail absentee ballots to all eligible voters in the nation's most populous state.

"That would be like me waking up one day and saying, 'I'm going to file a voting-rights lawsuit in' — I don't even know what the equivalent is — 'Wyoming or South Dakota,' " says Elias, the Democratic Party election lawyer. The RNC's suit against California "suggests to me that their \$20 million is only a small tip of the iceberg," he adds.

The funders of the RNC's 2020 legal war chest are a who's who of plutocrats and industry titans for whom a \$100,000 check to the president is pocket change. According to an analysis of election records by *Rolling Stone*, these funders include L.L. Bean heiress Linda Bean, private-equity magnate Stephen Schwarzman, Johnson & Johnson heir Ambassador Woody Johnson, Sen. Kelly Loeffler (R-Ga.), the Ricketts family that founded TD Ameritrade, coal barons Joe Craft and Robert Murray, billionaire financiers John Paulson and John W. Childs, financial executive Charles Schwab, Madison Square



rights includes some of the biggest benefactors of the Trump administration's economic policy," says Morris Pearl, chair of Patriotic Millionaires. "They don't want to protect our elections — they want to protect their positions of privilege."

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The Trump campaign has a deep-pocketed ally in its attack on mail-in voting: the Honest Elections Project. Funded by undisclosed dark money and linked to Leonard Leo, the conservative activist who helped put Justices Neil Gorsuch and Brett Kavanaugh on the Supreme Court and steered more than \$250 million for conservative judicial causes between 2014 and 2017, the organization says on its website that voter suppression is a "myth." The group has run ads that warn against "risky new methods" like mail-in ballots, and accused Wisconsin Democrats of sowing election "chaos" after the state's Republicans refused to send every voter an absentee ballot or delay its April primary election because of COVID-19. The group has hired the same law firm spearheading the RNC's massive litigation campaign, Consovoy McCarthy, to pressure election officials in battleground states to purge their voting rolls, threatening to sue them if they don't comply.

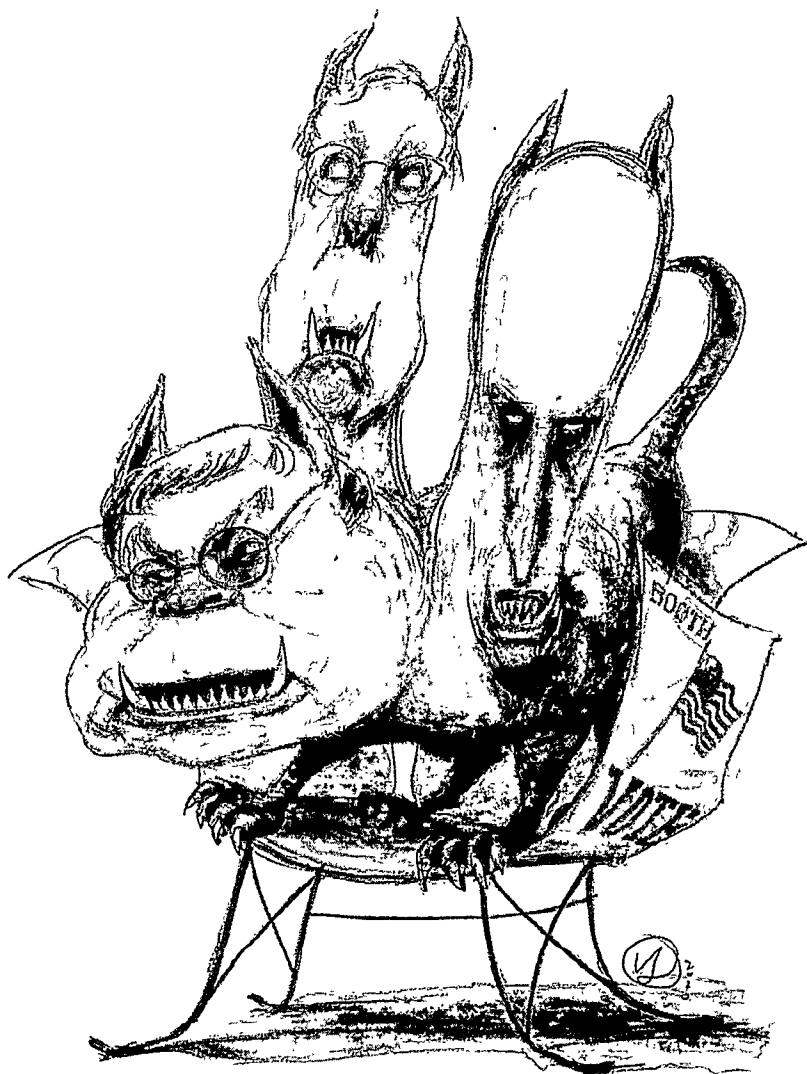
The group's executive director, Jason Snead, is a former Heritage Foundation scholar who has argued that felons "should be required to prove that they have turned over a new leaf" before they can vote again and that "fraudulent" voting behavior is **"deeply ingrained in certain regions of the country."** Earlier this year, Snead told *Breitbart News* that the "greatest danger" facing American elections amid the COVID-19 crisis wasn't the risk of illness or death, but Democratic proposals for reforming the voting process to meet our pandemic moment. (Snead did not respond to a request for comment.)

Voting-rights activists say Snead's comments are typical of a conservative movement that wants to make it harder for people of color, ex-felons, and college students to vote.





is “directly dog-whistling around this racist idea that there are these droves of illegal voters, which is not true.”



**ILLUSTRATION BY VICTOR JUHASZ FOR ROLLING STONE**

**On November 3rd, 1981,** Lynette Monroe, who lived in northwest Trenton, headed out to her polling place. It was Election Day in New Jersey. When Monroe, a Democrat, arrived at the polling site, she was stopped outside by a member of a group called the National Ballot Security Task Force. Monroe was asked if she had her voter-registration card with her. She said she did not but that it didn't matter — she was a registered voter. But the National Ballot Security Task Force members “turned her away, preventing her





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When she was turned away, Monroe had no way of knowing that the National Ballot Security Task Force was a massive voter-suppression project funded and carried out by the Republican National Committee and the New Jersey Republican Party. Republicans hired county deputy sheriffs and local policemen with revolvers, two-way radios, and “National Ballot Security Task Force” armbands to patrol predominantly black and Hispanic precincts in New Jersey. They posted large warning signs outside polling places saying that it was “a crime to falsify a ballot or to violate election laws.” The signs omitted any mention of the GOP’s role in this egregious intimidation scheme, but the intent was obvious: “to harass and intimidate duly qualified black and Hispanic voters for the purpose and with the effect of discouraging these voters from casting their ballots,” the lawsuit stated.

The result of the suit was a **1982 consent decree** between the Democratic and Republican parties. Even though the RNC refused to admit wrong-doing in New Jersey, the group agreed to stop harassing and intimidating voters of color, including by deputizing off-duty law-enforcement officers and equipping those officers with guns or badges. Over the next three decades, Democrats marshaled enough evidence of ongoing Republican voter suppression to maintain the consent decree until 2018, when a federal judge lifted the order.

The 2020 presidential election will be the first in nearly 40 years when the RNC isn’t bound by the terms of the 1982 decree. Clark, the Trump campaign lawyer, told the group of Republicans at the private meeting last November that the end of the consent decree was “a huge, huge, huge, huge deal,” freeing the RNC to directly coordinate with campaigns and political committees on so-called Election Day operations. The RNC is sending millions of dollars to state Republican parties to vastly expand these measures, which include recruiting 50,000 poll observers to deploy in key precincts. Josh Helton,



epicenter for voter fraud in this country” and a likely target for the GOP’s 2020 poll-watching efforts.

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Depending on the state, poll watchers enlisted by political parties can challenge a voter’s eligibility based on their address, citizenship, and even the date they registered to vote. Michigan law, for instance, says poll watchers need only “good reason” to pull a prospective voter out of line and challenge their eligibility. North Carolina allows anyone registered to vote with “good moral character” (whatever that means) to work as a poll watcher. Even in Oregon and Washington state, where elections are conducted by mail, poll watchers can observe county clerks count mail-in ballots and make challenges when they see fit.

Here again, outside groups seem to be drafting off of the Trump campaign’s aggressive plans. Catherine Engelbrecht, founder of True the Vote, a group that spreads misinformation about “voter fraud” and has accused “globalists” of exploiting the COVID-19 pandemic to “finance a massive push to ‘vote at home,’” laid out at a closed-door conference in February a plan to enlist Navy SEALs to monitor polling places in 2020. “You get some SEALs in those polls and they’re going to say, ‘No, no, this is what it says. This is how we’re going to play this show,’” Engelbrecht said, according to a recording **obtained by *The Intercept***. “That’s what we need. We need people who are unafraid to call it like they see it.”

To voting-rights advocates, the RNC and True the Vote’s poll-watching plans, if realized, are nothing more than a blatant voter-intimidation strategy. “Their program is based on a false premise that Americans, and especially Americans of color, are breaking the law when it comes to voting, so their poll monitors become de facto policemen and serve no purpose but to intimidate voters, because fraud is so rare,” says Groh-Wargo of Fair Fight Action. “They’re aiming to pack monitors into polling places to disrupt voting



**Just as racism** and xenophobia have always been essential to Trump's political DNA, so, too, have nonstop, evidence-free claims of "voter fraud" and "rigged" elections. Even after he defeated Hillary Clinton in 2016, he claimed — with zero evidence — that 3 to 5 million noncitizens had voted, and that was why he lost the popular vote, thus surely becoming the first presidential victor to allege historic levels of "illegal" voting ... in the election he just won. Now, with COVID-19 ravaging the country and disproportionately afflicting people of color, Trump has found a way to attack the democratic process that combines his Stephen Miller-inspired racist agenda and his deranged voter-fraud obsession.

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Vote-by-mail didn't used to be a partisan idea. Before COVID-19, five states, led by Democrats and Republicans alike, conducted their elections entirely by mail — Colorado, Hawaii, Oregon, Washington, and Utah — and 29 more states plus D.C. permitted "no excuse" absentee voting, meaning voters can request absentee ballots without having to provide any reason why. U.S. service members have long mailed in their ballots from overseas, and until recently both political parties have touted its benefits.

But suddenly Republican elected officials, from Trump on down to local lawmakers, are blocking efforts to make it easier to vote by mail. Consider Iowa. In response to the pandemic, Secretary of State Paul Pate, a Republican, extended early voting and sent an absentee ballot application to every voter. Turnout in the state's June primary elections surged and the vast majority of people voted absentee. Iowa Republican legislators responded by hastily passing a law to limit the secretary of state's emergency authority.

"Mail-in voting wasn't created in this pandemic," says Janai Nelson, associate director-counsel at the NAACP Legal Defense and Educational Fund. "It's only when we see the



The naked hypocrisy of the Republican Party's newfound antipathy toward mail-in voting is all the more glaring considering that Trump, Vice President Mike Pence, AG Barr, and many other senior Trump administration officials have voted absentee repeatedly in the past. And as an actual strategy, Trump's attacks on mail-in voting could even turn out to be self-destructive if you account for the fact that Republican voters have long been avid users of mail-in voting. In Florida, absentee voting is widely popular among the state's Republican voters. In Arizona, where the Republican presidential candidate has won every four years since 1972 with only one exception, the GOP initiated and perfected the use of mail-in voting. Chuck Coughlin, a consultant who advised Sen. John McCain, calls it "a very effective way of letting people participate" with few incidents of fraud.

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The real threat to the 2020 elections is not what Trump, Barr, and their allies want you to believe. It's the funding and readiness crisis facing thousands of election jurisdictions trying to shift to a hybrid in-person/vote-by-mail model in a few months' time. In California, where 72 percent of voters mailed in their ballots in the most recent primary, the transition won't be as hard. But Pennsylvania, where the percentage of mail-in ballots is in the single digits, faces a daunting task. Coughlin, the Arizona consultant, says it took years and many elections for Arizona to master the use of widely adopted mail-in voting. Underfunded election operations are a perennial issue, but with state budgets facing dramatic cutbacks due to COVID-19, the funding shortfall could be worse than ever. "My usual election-cycle comment is that we're trying to find enough duct tape to cover the holes in the bucket," says Justin Levitt, a professor at Loyola Law School and voting-rights expert. "This time, we're trying to make the bucket out of duct tape."



election funding. (So far, Trump has signed off on just \$400 million, one-tenth of the recommended amount, and local officials have already spent most of that initial money.) House Democrats included that funding in a coronavirus relief bill, the HEROES Act, but Senate Republicans, led by Mitch McConnell, blocked the bill and Trump called it “dead on arrival.”

How to explain this? It’s possible that voter suppression isn’t the only goal — it’s also about creating chaos and confusion before, on, and after Election Day. Perhaps Trump’s assault on voting in our pandemic election year isn’t a “strategy” at all but rather a kamikaze mission aimed at the heart of American democracy. The way Coughlin sees it, the ultimate goal of Trump’s criticism of mail-in voting is “to sow doubt in people’s minds about the process, which validates any view of his unless he wins.”

By beating the drum about “massive fraud and abuse” and spreading misinformation about the integrity of the election, Trump could be laying the groundwork to challenge or outright deny the results. And if the RNC were to follow his lead and file lawsuits challenging the vote count, we could wind up in dangerously uncharted territory for American democracy. Picture *Bush v. Gore* on steroids. “We’ve never had a president delegitimize our democratic process intentionally,” says Rachel Bitecofer, a senior fellow and election forecaster at the Niskanen Center. “It is the kind of behavior you would not see — and should not see — in a healthy democracy.”

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# EXHIBIT 12

# Trump campaign used Cambridge Analytica data to deter millions of black voters from voting for Hillary Clinton, report

5 TB database used in secret efforts focused on dissuading voters in 16 swing states

Dev Kundaliya

29 September 2020

President Donald Trump's 2016 campaign used Cambridge Analytica data derived from Facebook to discourage nearly 3.5 million black voters from going to the polls and vote for Hillary Clinton.

**That's according to *Channel 4 News***, which obtained a sophisticated database, almost 5 terabytes in size, which was compiled by the Trump campaign and contained personal details of approximately 200 million Americans.

The report claims that in the database, the Trump campaign disproportionately flagged black Americans with the label "Deterrence", meaning voters that they didn't want to cast ballots.

The database sorted all voters, described as 'audiences', in eight categories so that they could be targeted with tailored ads on Facebook and other platforms.

Black Americans were targeted with negative ads in an effort to squash the turnout for Hillary Clinton. The ads shown to them included videos in which

Hillary Clinton referred to black youths as "super predators".

The campaign's secret efforts in the run up to the 2016 election focused on 16 swing states, according to *Channel 4 News*, many of which were narrowly won by Trump.

For example, Trump won Michigan by 10,000 votes, where 15 per cent of the voters were black. In Georgia, despite black people constituting 32 per cent of the population, they accounted for 61 per cent of the 'Deterrence' category.

Political analysts estimate that nearly 2 million black voters in the US who backed Barack Obama in the 2012 election did not turn out to support Hillary Clinton.

President Trump's re-election campaign described the *Channel 4 News* report as fake and said that they did not use any such database to target Black voters in US.

"President Trump has built a relationship of trust with African American voters because of the First Step Act's criminal justice reform, creating Opportunity Zones and his recently announced Platinum Plan to invest \$500 billion in the black community," said Tim Murtaugh, communications director for the Trump campaign.

The Trump campaign is said to have spent about \$44m on Facebook ads in 2016 election, generating about 6 million advertisements in total.

Last year, the US Federal Trade Commission (FTC) approved a \$5 billion settlement with Facebook over the sharing of data with Cambridge Analytica. The FTC opened its investigation in March 2018 following claims that data from approximately 87 million Facebook users had been illegally acquired by **Cambridge Analytica**.

The company purchased the data from an academic who had created a Facebook quiz app that collected personal information, not only from

consenting users, but also from their Facebook friends, without their knowledge. Cambridge Analytica collapsed in 2018 after losing most of its suppliers and customers following an exposé of its methods.

Facebook said that the elections and the company had changed over the past four years. The company stresses that **it has introduced new rules in the recent years** to prohibit voter suppression and to ensure that episodes like Cambridge Analytica are not repeated. However, critics argue that these measures are too little and too late.